

DEPLETION OF OUR ECONOMY: A STUDY ON WHITE COLLAR CRIMES IN INDIA

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ABSTRACT

White collar crimes are those crimes which are associated with person of high social status. They are distinct in nature from that of traditional crimes and occur due to unethical business practices motivated by financial gains. It is, in fact, the offender's prominent position which provides opportunity for such type of crimes by committing breach of trust endowed upon them. They have ushered at an increasing rate with the advent of industrialization and technological advancements. In the wake of development, there has been loss in the economy due to loopholes in the system which has provided a way for the growth of white collar crimes. They pose a significant loss to our economy as the financial loss cost involved in a white collar crime is several times greater than that of all the crimes taken together. Corruption and bribery are major problem in our country being a significant component of white collar crimes. The legal framework in India is not so comprehensive to deal with the issue of white collar crime. Also, the delayed justice which is administered by our judiciary is also one of the reasons for rise in white collar crimes.

INTRODUCTION

"The practitioners of evil, the hoarders, the profiteers, the blackmarketeers and speculators are the worst enemies of our society. They have to be dealt with sternly, however well placed important and influential they may be; if we acquiesce in wrongdoing, people will lose faith in us"

- Dr Radhakrishnan

The law of crimes has always been one of the most attractive branches of jurisprudence since early years of human civilization. In fact the law of crime has been as old as the civilization itself. Having said that, there are certain professions which offer lucrative opportunities to 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 become unscrupulous because of their neglect at school, home and other social institutions where people get training for citizenship and character building. These deviants have scant regard for honesty and other ethical values. Therefore, they carry on their illegal activities with impunity without the fear of loss of prestige or status. The crimes of this nature are called 'white collar crimes' and they are essentially an outcome of the competitive economy of mid-twentieth century.

Industrial revolution ushered an era of plenty but simultaneously gave birth to many new problems. In the wake of industrialization a newer form of criminality was born which has now assumed menacing proportions. Unlike the traditional crimes, this newer form of criminality is associated with the upper and middle class people and is committed by them in course of their occupations. This adversely affecting the health and material welfare of the community as a whole and is also threatening the entire economic fabric of the state.¹ 'White collar crimes' can describe a wide variety of crimes, but they all typically involve crime committed through deceit and motivated by financial gain. The desire for profit drives most white collar crimes, and individuals or groups who wield considerable power perpetrate the crimes. Unlike organized crimes, however well-respected members of society who enjoy high social status commit white-collar crime. In fact, it is the precisely the offender's prominent status that provides the opportunity for the crime.

White collar crime is generic term that refers to a broad range of illegal acts committed by seemingly respectable people in business settings as a part of their occupational roles. They are often master minded and are carried out in a planned manner by technocrats in the form of scams, frauds, etc. facilitated by technological advancements. They range from antitrust offences to healthcare fraud; impose enormous financial, physical and social harms on individuals, communities, and society; as well as pose significant problems for law

¹ Dr. Sanjay I. Soanki, "A Critical Study on White-Collar Crimes in India" available at [http://www.ijbmi.org/papers/Vol\(6\)11/Version-3/H0611035258.pdf](http://www.ijbmi.org/papers/Vol(6)11/Version-3/H0611035258.pdf) (Visited on 15 April, 2018).

enforcement and regulatory agencies that attempt to control and prevent such offenses.² In these types of offences not only the individual is being with pecuniary loss but also, such offences like peddling drugs and narcotic substances, counterfeiting of currency, financial scams are some of the crimes which evoke serious concern and impact to the national security and governance. Violation of foreign exchange regulations and import and export laws are frequently resorted to for the sake of huge profits.³

DEFINITION

One must concede that modern approach towards understanding a 'crime' or in any attempt to define 'crime', objective definition will surely fail. Unlike traditional crimes which were not only fewer in number but also were arising out of greed, land and lust; modern crimes are more complex. Due to changed moral values and social opinions in rising industrialism, rapid means of communications and scientific developments, crime and its facets are in multiples. White collar crimes have overridden all other property offences. It has become a global phenomenon with the advancement of the commerce and technology.

Historically, the word 'white collar crime' coined by Sutherland was not in any theoretical vacuum but was based on 'criminaloid concept' initially used by E.A. Ross (1907) in *Sin and Society*. Ross has used this concept focusing on businessmen who engaged in harmful acts under the mask of respectability. Ross explained that the 'criminaloids' are the most potent danger to the society causing maximum loss that too arguing 'virtues' and 'liberties'. Developing this concept, Sutherland defined white-collar crime as "*crime committed by a person of respectability and high social status in the course of his occupation.*"

Marshall Clinard defined white-collar crime as "a violation of the law committed primarily by groups such as businessmen, professional men, and politicians in connection with their occupations". *Paul Tappan* defined it as "White collar crime is a special type of solitary professional criminality. It involves real violation of criminal law systematically or repeated by business, professional and clerical workers in addition to their occupation". Also, *Sir Walter*

² Gennaro F. Vito, Jeffrey R. Maahs, *Criminology- Theory, Research and Policy* 388 (Jones & Bartlett Learning, 3rd edition)

³ Dr. Manju Koolwal, *White Collar Crimes* (Kamal Publisher, New Delhi, 2015).

Reckless said “White collar crime represents the offences of businessmen who are in position to determine the policies and activities of business”. *Frank Hartung* defines white-collar crime as a “violation of law regarding business which is committed for a firm by a firm or its agents in the conduct of its business”.

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.⁴

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.

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

Greed: People of high strata are financially stable. But, still they commit crimes out of greed. For this purpose, they adopt all sorts of illegal methods to have an economic gain.

Technology: Another reason behind the commission of white collar crimes can be technology. The emergence of new technologies, political pressure or growing business, has led to many more ideas which has resulted in the commission of crimes.

⁴ Aashish Ahuja, “Analysis Of White Collar Crimes In India”, available at <https://blog.ipleaders.in/analysis-white-collar-crimes-india/> (Visited on 18 April, 2018).

Competition: White collar crimes usually occur because of the desire to beat the competitor and to reach ahead of them. To win, crimes like forgery, bribery and frauds are committed.

Legislation: One of the major reasons behind the rise in the commission of white collar crimes are that there are not enough laws to deal with such kinds of crimes. In most of the cases, white collar criminals are not even prosecuted. The implementation of Information Technology Act 2008 is fragile due to lack of trained workers. It is tough to find white collar criminals because the crimes which are committed are mostly done in private places and hence there is no eye witness.⁵

TYPES OF WHITE COLLAR CRIMES

Few infamous categories of white collar crime include hoarding, black marketing, adulteration, tax evasion, etc. These days, white collar crimes are more linked with the profession in which it is committed, and accordingly various names are given. Professional or occupational crimes by doctors, engineers, legal professionals are individually, and sometimes institutionally (through Hospitals, Associations, Institutions including educational institutions etc) involve in committing these crimes.

From the theoretical perspective, four types of white collar crime are explained here. The *first category* is that of *personal*, or *ad hoc crimes* in which offender pursue his individual objective, and usually has no face-to-face relationship with the victim. Tax evasion by individual, frauds, credit frauds, etc. come in this category. In this category the offender is often persuaded by greed, or sometimes by a very serious real or perceived need.

The *second category* is where the offender abuses the trust or faith bestowed over him by individual or institution. Financial embezzlements by employees or fiduciaries, accepting bribes or other favours to grant contracts on behalf of one's government or business employer, misuse of an employer's property or information for private profit, misuse of labor union pension funds, creating "ghosts" on payrolls or fictitious accounts payable- all of these are typical examples in this category. Here the offender has power to cause harm by virtue of his

⁵ Raj Krishna, Rishabh Goswami, "White Collar Crimes: A Conceptual Discussion" available at <http://ijldai.thelawbrigade.com/wp-content/uploads/2016/11/Raj-Krishna.pdf> (Visited on 18th April, 2018).

or her position and, through control and manipulation of paper or computer records, to temporarily or permanently bury evidence of crime.

The *third category*, and the most difficult category of white collar crimes belongs to that type of offender, usually with a real high status in society or their respective community, and they commit crime incidental to, and in furtherance of their organizational operations. Since, under this class, committing crime is not the central purpose of the organization, and people too belong to a real high status, having influence over system and society both, ravish not only regulatory norms but also faith of people at large. Offenders, under this category often indulge in antitrust violations, collusive bidding, and corrupt practices at political as well as economic fronts to support their individual or organizational interests etc. Fraudulent medical claims, submission of a misleading statement, academic, institutional or financial, to obtain more credit/fund/grant etc. also comes under this category of white collar crime. Crime committed under this class is well hidden and extensively rationalized. The recent examples of such crimes are 2G Spectrum Scam, Coalgate Scam, Commonwealth Games Scandal, Mumbai Adarsh Defence Society Scam, Bihar Fodder Scam, etc.

The *fourth category* of white-collar crime is a class where crime is committed as a part of business itself. Violation of trademarks or copyright, Patent Law or Competition Law etc. come under this category. The violation of Domain name and other corporate crimes are also white collar crimes of this type.⁶

INDIAN SCENARIO

In the India, there has been prevalence of white-collar crimes over a period of time. They are spreading like a rapid fire in every sphere of society. Though corruption, one of the species of white collar crimes, has been the most talked about issue in all spheres- social, economic and political, not much stringent steps/actions have been taken to curb this menace.⁷ The Indian Penal Code 1860⁸ is the earliest comprehensive and codified criminal law of India. It

⁶ Dr. Girjesh Shukla, Criminology- Crime Causation, Sentencing and Rehabilitation of Victims 101, (Lexis Nexis, 2013)

⁷ G. Nagarajan & Dr. J. Khaja Sheriff, White Collar Crimes in India, International Journal of Social Science & Interdisciplinary Research available at <http://indianresearchjournals.com/pdf/IJSSIR/2012/September/16.pdf> (Visited on April 17, 2018).

⁸ Act No. 45 of 1860

specifically does not mention the word ‘white-collar crimes’ but deals with many offences which are closely linked to white collar crimes such as bribery and corruption,⁹ counterfeiting of coins and government stamps,¹⁰ of offences relating to weights and measures,¹¹ offences relating to adulteration of food stuffs and drugs,¹² misappropriation of public property and criminal breach of trust,¹³ cheating,¹⁴ forgery and offences relating to documents¹⁵ and counterfeiting of currency.¹⁶

Like any other country, India is equally in the grip of white collar criminality. The reason for enormous increase in white collar crime in recent decades is to be found in the fast developing economy and industrial growth of this developing country. The *Santhanam Committee Report* in its findings gave a lucid picture of white collar crimes committed by persons belonging to higher social strata. It includes businessmen, industrialists, contractors, suppliers as well as corrupt public officials. The Reports of the *Vivin Bose Commission of Inquiry* which looked into the affairs of Dalmia Jain group of companies (1963) highlighted that how industrialists indulge themselves in white collar crimes such as forgery, fraud, falsification of accounts, tampering with records for personal gains and tax evasion etc.¹⁷ Similar observations were made by *Mr Justice M.C Chagla* while dealing with the case of business tycoon Mundhra who wanted to build up an industrial empire by dubious means. There were as many as 124 prosecutions against the business magnate and companies owned or controlled by him between 1958 to 1960 and as many as 113 of them resulted into conviction.¹⁸

The 2010-2011 corruption and fraud cases in India – 2G Spectrum scam, Adarsh Society scam, CWG fraud, various land scams etc. – have negatively impacted India’s reputation internationally. The infringements are of various kinds, with bribery and corruption making up 83% of cases. A large part of the frauds also relate to cyber crime (71%) and diversion of assets

⁹ Indian Penal Code, 1860- Section 168, 169, 171B, 171C, 171E, 171H.

¹⁰ Ibid section 230 – 263.

¹¹ Ibid section 264 – 267.

¹² Ibid section 272 – 276.

¹³ Ibid section 403 – 409.

¹⁴ Ibid section 415 – 420 .

¹⁵ Ibid section 463 – 489.

¹⁶ Ibid section 489A – 489D.

¹⁷ Prof. N.V. Paranjape, *Criminology & Penology with Victimology* 147 (Central Law Publications, 16th edition, 2015)

¹⁸ Fourth Annual Report on the Working of Indian Companies Act, 1956, Government of India (1960).

(65%). The sectors most affected are financial services (33%) and information and entertainment (17%), according to the survey.

The Satyam Scam: In perhaps one of Corporate India's worst unfolding chapters, Mr B. Ramalinga Raju, Founder-Chairman of the \$2-billion Satyam Computer Services, dramatically stepped down after admitting of faking financial figures of the company to the tune of Rs 7,136 crore, including Rs 5,040 crore of non-existent cash and bank balances. The startling disclosure by Mr Raju, considered one of the poster boys of Indian IT, jolted the corporate world, investor community, Government and large pool of young professionals, pushing the fourth largest Indian IT company into a crisis, exposing it to acquisitions and leaving the future of 53,000 employees in balance. Mr Raju in his revelation to the BSE admitted that the balance sheet for September 30, 2008, comprised faked and exaggerated figures of revenue, profit, interest and debt. The list includes Rs 5,040 crore of fictional cash and bank balances, non-existent accrued interest, discreet liability of Rs 1,230 crore on account of funds raised by Mr Raju and overstated debtors position of Rs 490 crore (as against Rs 2,651 crore). "What started as a marginal gap between actual operating profit and the one reflected in the books continued to grow over the years. It has attained unmanageable proportions as the size of the company's operations grew over the years," Mr Raju explained.¹⁹

The PNB bank case: Nirav Modi and Mehul Choksi, in connivance of several senior as well as junior officials, defrauded PNB of several thousand crore of rupees. These PNB officials fraudulently issued LoUs and LoCs on behalf of several companies belonging to the duo for availing buyers' credit from overseas branches of Indian banks. None of the transactions were routed through the CBS (Core Banking Solution) system, thus avoiding early detection of fraudulent activity, which was going on since 2011.

In the scam now pegged to be around Rs 13,700 crore, over Rs 450 crore was diverted to around six beneficiaries companies based in Hong Kong and Sharjah (UAE) in just one month - July 2014. The amount of money, issued as loans through the LoUs (Letters of Undertaking) or LoCs (Letters of Credit) by Punjab National Bank, was later routed to the shell companies

¹⁹ "White Collar Crimes With Special Emphasis On Corporate And Cyber Crimes" available at <https://www.lawteacher.net/free-law-essays/criminal-law/white-collar-crimes.php> (Visited on 19th April, 2018).

linked to Nirav Modi and Mehul Choksi in Hong Kong and Sharjah. These companies include Sunshine Gems (Hong Kong), Sino Traders (Hong Kong), Tri Colour Gems (Sharjah), Diagem (Sharjah), and Auragem (Hong Kong).

The ED has already issued Letter Rogatory (LR) - a request sent to a foreign court for judicial assistance - to 13 countries (mostly regulated by the United Nations), including Hong Kong and UAE, to seek their cooperation in the investigation. Both Nirav Modi and Mehul Choksi are on the run since January 5. Through these LRs, the ED has sought the details of companies associated with the duo, their local addresses, and the beneficiaries involved.²⁰

JUDICIAL RESPONSE

The Prohibition of Corruption Act, 1986 and the Code of Criminal Procedure, 1973, both provide special impunity by Section 19 and Section 197, respectively. The sanction contemplated in Section 197 of the Code concerns a public servant who “is accused of any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty”. To restrict the unnecessary harassment of public servant, these sections provide that no court shall take cognizance without prior sanction for prosecution from the appropriate authority.

Dealing with corruption related matters, where often sanction for prosecution of a public servant is either refused or delayed by the government, Supreme Court observed in the **Vineet Narain v. Union of India**,²¹ that the corruption cases against public servant were often delayed due to refusal or delayed sanction by the competent authority despite the investigation agency having disclosed a prima facie against the public servant. The Court held that sanction to prosecute not being a quasi-judicial function, the competent authority must give sanction if it is satisfied that material placed before it is sufficient for prosecution of the public servant. The Supreme Court reiterated this approach in **Subramaniam Swamy v. Dr. Manmohan Singh**,²² and reaffirmed that the 3 months time limit imposed on the grant of governmental

²⁰ Available at <https://www.businesstoday.in/sectors/banks/pnb-fraud-companies-owned-by-nirav-modi-mehul-choksi-received-rs-427-crore-in-july-2014/story/272700.html> (Visited on 20th April, 2018).

²¹ (1998)1 SCC 226.

²² AIR 2012 SC 1185.

sanction under section 19 of Prevention of Corruption Act, 1988 for the prosecution of public servant for corruption must be strictly adhered to.

In the case of **Jaylalitha v. Union of India**,²³ the Supreme Court admitted that corruption is rampant among the public servants. Court further stated that corruption corrodes the moral fabric of the society and is harmful to the national economy. Corruption by persons occupying high posts in government, by misusing their powers can cause considerable damage to the national economy, national interest and image of the country.

In **Ram Narayan Poply v. C.B.I.**,²⁴ the Apex Court expressed concern for adverse effect of white collar crimes and held that economic offenders should not be allowed to ruin the economy of the country and they should be sternly dealt with.

The Supreme Court in **State of Gujarat vs. Mohanlal Jitmalji Porwal and Anr.**²⁵ has differentiated between the general crimes and white collar crimes. In the above-mentioned judgement, Justice Thakker had stated that murder can be committed in the heat of moment but these economic offences are committed with a cool calculation and planned strategy to gain personal profits.

In case of **Nimmagadda Prasad v. C.B.I.**,²⁶ the appellant along with Jagan Mohan Reddy, enriched himself for more than 40,000 crores of rupees by the influence of Jagan Mohan's father Dr. Y.S. Rajasekharan Reddy who was the then Chief Minister of Andhra Pradesh. The Chief Minister, Late Dr. Reddy extended many undue favours to the appellant by abusing his official position and thereby allotting 18879 acres of land to the appellant and in return, he paid illegal gratifications amounting to 854.5 crores rupees to Y.S. Jagan Mohan Reddy and his group of companies. Illegal gratifications were paid in the guise of investments/share application money to give them corporate colour in order to escape criminal charges.

The appellant's prayer for bail was dismissed by the Supreme Court in the view of the fact that he was involved in a grave economic offence of alienating prime lands to selected private companies/individuals under the garb of development using deceptive means resulting in

²³ (1999) 5 SCC 138.

²⁴ AIR 2003 SC 2748.

²⁵ AIR 1987 SC 1321

²⁶ AIR 2013 SC 2821.

wrong ownership and control of material resources detrimental to common good. The Court notes that the appellant was a person of means and as such, he could influence witnesses, therefore, it would not be proper to release him on bail.

RECENT STEP

The Union Cabinet decided to bring into effect the *Fugitive Economic Offenders Bill* as an ordinance, after the Bill could not be tabled in the Budget Session of Parliament owing to a logjam. The ordinance will lay down measures to empower Indian authorities to attach and confiscate the proceeds of crimes associated with economic offenders and their properties. The ordinance has been approved in order to address the deficiency in present laws. It is expected that the special forum, to be created for expeditious confiscation of the proceeds of a crime, in India or abroad, will coerce the fugitive to return to submit to the jurisdiction of courts. The ordinance will cover those whose alleged proceeds from a crime are over Rs 1 billion. Any person who does not appear before a special court or does not respond to summonses will be declared an economic offender. All the offender's assets will be confiscated, not only those from the proceeds of the alleged crime.

According to the ordinance, a special court will have powers to declare a person an economic offender. An administrator will be appointed to manage and dispose of the confiscated assets, including helping banks recover any defrauded amount. The offender will not be able to file any civil claim in any Indian court to recover his or her assets.²⁷

Currently, confiscation can be done through multiple laws, but is a complicated process. The laws under which such offenders are tried are the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, the Recovery of Debts Due to Banks and Financial Institutions Act, and the Insolvency and Bankruptcy Code.

CONCLUSION

The financial loss to society from white collar crime is far greater than the predatory crimes committed by persons of lower socio-economic status. They violate trust and create distrust which results in the lowering of social morale and social disorganization to a very large extent.

²⁷ Available at http://www.business-standard.com/article/economy-policy/cabinet-clears-ordinance-to-crack-down-on-nirav-modi-mallya-type-fugitives-118042100800_1.html (Visited 20th April, 2018).

One of the most important aspect of white collar crime is that at times, the members of community themselves contribute to the commission of various white collar crimes willingly or unwillingly. The act of illegal gratification to public servants to get their work done quickly, black-marketing in times of scarcity, evasive price violations, rent-ceiling violations etc. are some of the common examples where ‘victims’ of the crime are themselves to be blamed for involvement in white collar criminality. In fact, such crimes cannot be committed unless there is a illegal demand for illegal favour from consumers and they are actively involved in the deal.

White collar crime is, therefore, a complex area to conceptualize. It remains on the sidelines of criminology and poses analytical, definitional and research problems. India to maintain its growth story needs to reduce fraud and corruption in government and private sector. Indian government must improve governance and take strict action against the offenders. 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. The anti-corruption laws and the other laws dealing with various white collar crimes need their proper enforcement by all those who are in the balm of affairs.

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