

An Analysis of White Collar Crime in India: A Study

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Abstract

In uncivilized society there was no criminal law "A tooth for a tooth, an eye for an eye, a life for a life" was the forerunner of criminal justice. The Indian penal code, 1860 also deal with white collar crimes. This is the earliest comprehensive and codified criminal law of India. It deals with many white collar crimes and punishment is provided for the same. Analysis of specific laws on White Collar Crime (W.C.C.) deals with analysis of specific Act on W.C.C. besides the Indian designed to deal with W.C.C. judicial attitude towards white collar crimes deals with attitude of Judiciary towards these crimes numerous judgments delivered by Supreme Court and various High Courts on different facts of W.C.C. have been analyzed.

"Evaluation of actual enforcement of laws relating to W.C.C. in the state of Punjab" deals with evaluation of actual enforcement of the laws relating to white collar crimes in Punjab. The enforcement of laws relating to W.C.C. has been judged by analysing the secondary data.

Keywords: White Collar Crimes, Corporate Crime, Corporation Criminology, Financial frame.

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1. INTRODUCTION

Crimes has also increased with the advancement of the society. Now with the advancement of sciences and technology never form of criminality has arising known as white collar crimes. The notion of white collar crimes was first introduced in the field of criminology by **Prof. Edwin H. Sutherland in 1989**. He defined white collar crimes as a crime committed by persons of respectability and high social status in the course of their occupation. The main categories of white collar crimes are bribery and corruption, feed and drug adulteration, counterfeiting, forgery, tax evasion, cybercrimes etc.

White collar crimes are not a new phenomenon in our country. The IPC 1860 is the earliest comprehensive and codified criminal law of India. It also deals with many white collar crimes and punishment is provided for bribery and corruption, counterfeiting of coins and government stamps, offences relating to weights and measures, offences relating to adulteration of food stuffs and drugs, misappropriation of public property and criminal breach of trust, cheating, forgery and offences relating to documents and counterfeiting of currency. To understand the gravity of these white collar crimes under IPC it is desirable to discuss these section in details.

The analytical study of white collar crimes is usually associated with the criminologist **Eswin H. Sutherland** it was his penetrating work in the area of crime which invited a criminologists attention on grave effects of white collar crimes on the total crime phenomenon Sutherland points out that besides the traditional crimes such as assault, robbery, dacoity, murder, rape, kidnapping and other acts involving violence, there are certain anti-social activities which the persons of upper strata carry on in course of their occupation or business. These activities for a long time were accepted or a part of usual business tactics necessary for a Shrewd professional or businessmen. Thus, any complaint against such tactics often went unheeded and unpunished. Actually **Prof. Sutherland** was preceded by those who were aware of this dangers to the society from the upper socio-economic detriment of public at large. In 1982, Edwin C. Hill read a paper before the International Congress on the "Prevention and repression of crime" at London wherein he called attention to the dangers to society from the upper socio-crimes groups who ruthlessly exploited the accepted economic system without paying any heed to the needs and well-being of the common people. Hill called such exploiters "Criminal Capitalists". The basic defect of this view was that it based the distinction between what crime to be called as "White collar crimes" and other crime solely on assumed division of the society into two classes. Due importance was attached neither to the nature of crime nor its connection with the perpetrator's occupational role. **Herman Manheim** included chapter on methods of Business administration in his study of crimes in England and he tried to show that certain method at large scale business administration are found to produce corresponding types of law breaking and stressed that the methods may cover the whole range of activities from manifestly criminal one to those. Which in themselves are not only perfectly honest and useful but even indispensable for the well-being of the community at large.

Goswani P. States that white collar crimes are committed by person of status not for need but for greed.

According to GERAL N. HILL and KATHLEEN T. HILL white collar crimes is a generic term for crime involving commercial fraud, cheating consumer, swindles, inside trading on the Stock market

embezzlement and other forms of dishonest business schemes. The term comes from the out of date assumption that business executives wear white shirts and ties. It also the erotically distinguishes these crimes and criminals from physical crimes, supposedly likely to be committed by “blue collar” workers.

Corruption: Corruption is one of the problems which our country has been facing from time immemorial. The word corruption is very comprehensive in its meaning. It implies all the activities which are against the law and the society. Its scope is very wide and it includes all the spheres of social life. The corruption is not confined to any particular sphere. It has entered in every aspects of our modern society.

According to Oxford Advanced Learner’s Dictionary corruption means dishonest or illegal behavior especially of people in authority.

According to Black’s Law Dictionary corruption means a vicious and fraudulent intention to evade the prohibition of the law. Dr. P. Ramanatha Aiyar’s definition seems to be very wide. According to him corruption is something against law, something forbidden by law, it is an act or intent to gain advantage not consistent with official duty and the right of others. Corruption can be defined as departure from what is pure or correct from the original. The recent scandals like 2G Spectrum Tele Communication Scam, Common Wealth Game Scam, Adarsh Housing Society Scam has rocked the nation. PNB Fraud by Nirav Modi about Rs. 11,400 crore, Rs. 390 crore at OBC by Jewellery exporter Dwarka Das Seth International Pvt. Ltd., Rs. 3,695 crore scam of Rotomac Owner Vikram Kothari, Anubhav Mittal’s Rs. 3,700 crore scam in the name of likes etc.

The Santhanam committee report in its finding gave a vivid picture of white collar crimes committed by person of respectability such as businessmen, industrialists, contractors, suppliers and corrupt public officers.

In spite of various tools available, corruption has increased the present scenario of corruption. In India it has been depicted by justice A.K. Ganguli in Subramanian Swami V/s Dr. Manmohan Singh in the following words.

Today corruption in our country not only poses a grave danger to the concept of constitutional governance; it also threatens the very foundation of Indian Democracy and the Rule of Law. The magnitude of corruption in our public life is incompatible with the concept of socialist, secular democratic republic. It cannot be disputed that where corruption begins, all rights end. Corruption devalues human rights, checks development and undermine justice, liberty, equality, fraternity which are the core values of our preamble. Therefore, the duty of the court is that any anti-corruption law has to be interpreted and worked out in such fashion as to strengthen the fight against corruption.

The Supreme court of India in J. Jayalathia V.s U.O.I. has held that “corruption corrodes the moral fabric of the society and corruption by public servant not only leads to the corruption of the moral fabric of the society but is also harmful to the national economy and national interest as the person occupying high post in government by misusing their powers due to corruption can cause consideration damage to the national economy, national interest and image of the country”.

2. OBJECTIVES

- To find out the working position, role and effectiveness of various institution/authorities dealing with anti-white collar crimes.



- A positive analysis of various legislations relating to white collar crimes mean for curbing the white collar crimes.
- To find various practical problems regarding the enforcement and adjudication of the white collar crimes.
- To analysis the concept of white collar crimes prevailing in today's scenario.

Elements of white collar crimes: The main elements of white collar crimes are:

- It involves violation of legal codes.
- It takes place directly or indirectly in connection with a legitimate occupation.
- It aims as gaining money.
- The crime is not against a specific individual or a firm but is against society at large. There is therefore, no specific victim who would complain.
- Earlier on a "person of high status" committing this crime was considered (white collar) criminal but now a 'person of any class violating law (different from one who commits an immoral or unethical act) in the course of occupational activity' is described as an occupational offender.
- The person involved in white collar crimes which involves high stakes but carries the most negligible danger of detection and identification. Further, it is most negligible crime against which the victims are least likely to fight.
- The offender does not regard himself as a criminal but considers himself a law breaker whose act has no victim.
- The persons involved in illegal occupational activities adopt a policy of fixing cases. It is not only the law enforcement officers are fixed up but the services of politicians, bureaucrats and influential People are also used for 'protection'.
- The effect of this crime is much more serious for society than an ordinary crime.

Cases

State of Gujrat V/s Mohanlal Jitmalji Porwal & Anr. Supreme Court has differentiated between the general crimes and white collar crimes. Justice Thakkar 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.

3. TYPE OF WHITE COLLAR CRIMES

1. **Bank Fraud:** Bank fraud means to engage in such activities in order to defraud to bank or using illegal means to obtain assets held by financial institutions.
2. **Blackmail:** Blackmail means demand for money by threatening some person to cause physical injury or exposing his secrets.
3. **Embezzlement:** When someone entrusted with money or property uses it for his own, it is embezzlement.
4. **Bribery:** Bribery means offering money, goods or any gift to someone in order to have control over his actions. It is a crime whether someone offers or accepts a bribe.
5. **Tax fraud:** Tax fraud means evading tax by providing wrong information in tax forms or illegally transferring property in order to avoid tax.
6. **Money Laundering:** It means the concealment of origin of illegally obtained money.

7. Insider Trading: When someone uses the confidential information to trade in shares of publicly held corporation.

4. PROFESSIONAL WHITE COLLAR CRIMINALITY

Medical Profession: white collar crimes which are commonly committed by persons belonging to medical profession include issuance of false medical certificates, helping illegal abortion, secret service to doctors by giving experts opinion leading to their acquittal and selling sample drug and medicines to patients or chemists in India.

Engineering: In the engineering profession underhand dealing with contractors and suppliers, passing of sub-standard works and material and maintenance of bogus records of work changed labour are some of the common examples of white collar crimes.

Legal profession: The instances of fabricating false evidence, engaging professional witness, engaging professional witness, violating ethical standards of legal profession and dilatory tactics in collusion with the ministerial staff of the courts are some of the common practices which are, truly speaking, the white collar crimes quite often practiced by some legal practitioners.

Educational Institutions: White collar criminals operate with impunity are the privately run educational institutions in this country. The governing bodies of those institutions manage to secure large sums by way of government grants of financial aid by submitting fictitious and fake details about their institutions. Also collecting substantial sums in the name of uniform, books, donation etc. apart from the usual heavy fees they collect.

Computer related white collar crimes: The developments in information technology and electronic media have given rise to a new variety of computer related white collar crimes which is commonly called cybercrimes. The wide spread growth of these crimes has become a matter of global concern and a challenge for the law enforcement agencies in the new millennium, because of the peculiar nature of these crimes, they can be committed anonymously and far away from the victim, without being physically present there.

Further, cybercriminals have a major advantage, they can use computer technology to inflict damage without the risk of being caught the cybercrimes over a wide range of illegal computer related activities which include offences such as theft of communication services, industrial espionage, dissemination of pornographic and sexually offensive material in cyberspace, electronic money laundering and tax evasion, electronic vandalism, terrorism and extortion telemarketing frauds, illegal interception of telemarketing frauds, illegal interception of telecommunication etc. presently, viruses are the most common problems which are causing serious damage to computer systems. There are now more than 5000 different strains viruses across the globe. There are some common cyber offences which are directed against computer systems, networks or data.

5. CAUSES OF WHITE COLLAR CRIMES

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

- **Not realizable:** Some people justify themselves in committing crimes as they feel that the government regulations do not understand the practical problem of computing in the face enterprise system.
- **Not really a crime:** Some offenders convince themselves that the actions preformed by them are not crimes as the acts involved does not resemble street crimes.
- **Lack of awareness:** One of the main reason of white collar crimes is the lack of awareness of people. The nature of the crime is different from the traditional crimes and people rarely understand it though are the worst victims of crime.
- **Greed:** Greed is another motivation of the commission of crime. Some people think that others are also violating the laws and so it is not bad if they will do the same.
- **Necessity:** Necessity is another factor of committing crimes people commit white collar crimes in order to satisfy their ego or support their family.

The changing dynamic of white collar crime in India: The Santhanam committee report for the first time attached great importance to the emergency of offences and mal practices known as "white collar crimes", which was also acknowledged by the 29th Law Commission report in 1972. The Santhanam Committee report recognized the emergency of mass Society with small controlling elite, encouraging growth of monopolies and the deviance from ethical behavior which led to growth of white collar and economic crimes. The report expressed its concern towards such crimes by opinion that this crime was more dangerous, not only because the financial stakes were higher but also they caused irreparable damage to public morals. The awareness of the common man towards these crimes is dismal or there is a relatively unorganized resentment of the public towards such crimes as the violations in such cases can be appreciated only by experts, secondly due to the complexity of these crimes they cannot be easily presented as news and probably because these agencies of communication are owned by businessman involved in the violations of many of these laws, white collar crimes, it is stated goes undetected because it transcends. The visibility of ordinary cheating practices of small merchants. It can however, be gathered from reports of investigating committees or from conversation with intimate friends.

Another fact that merits serious attention is that white collar crimes being a characteristics of acquisitive and affluent society, they do not exists in India on the scale on which it exists in England and America, but is not totally absent. The Indian society is by no means affluent, but it is gradually becoming acquisitive particularly in the urban areas. Corruption of administrative officers, embezzlement by top officials of MNC'S and corporations, evasion of tax (particularly of income tax) by person who fall in the higher income group, smuggling of goods which are scarce in the our country (such as gold watches and gold biscuits, gun, rifals, pistol etc.) and deliberate breach of foreign exchange regulations, may be cited as instances of white collar crimes in our country.

As the human race progress, every aspect of the society gets upgraded and developed, even the unfathomable greed of an individual from times immorial man also is an animal, has aspired for more power and wealth zealously though all scrupulous and unscrupulous means. It is an era of affluent crimes where a CEO sitting in his AC chambers breaches the fiduciary relationship between his company and clients by misappropriating certain information or embezzling the

public money. This person is vividly different from our traditional blue collar criminal, as he is intellectual and is bestowed upon by God with all the material comforts, despite which he dares to commit an act which can have starting consequences which may vary from the downfall of the economy to the commission of suicides by his shareholder.

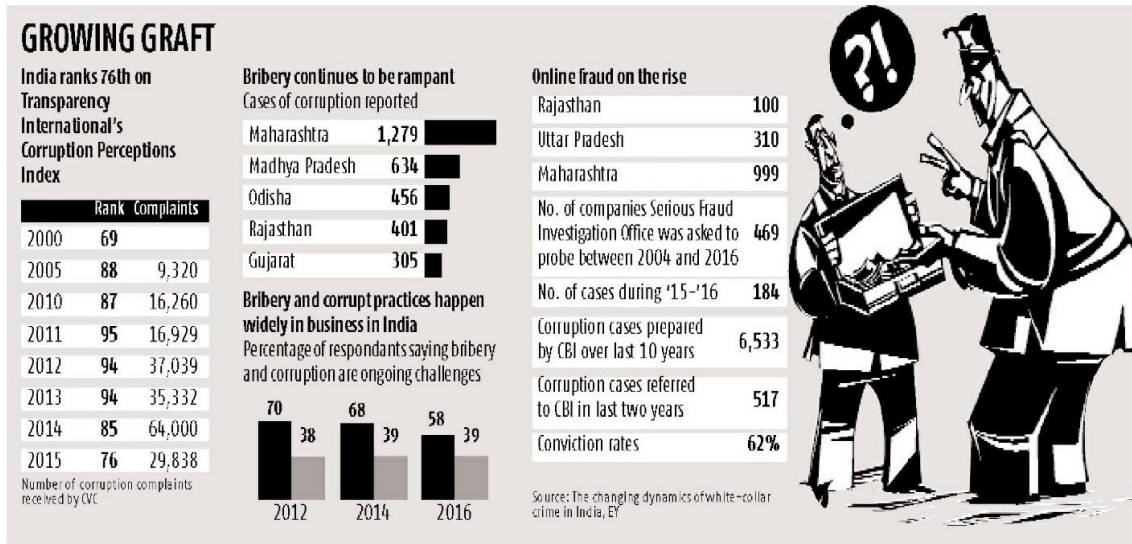
According to a new report by EY, between 2004 and 2016, the serious fraud investigation office was asked to probe 469 cases, of which 184 companies were alone probed in 2015-16. The report titled "The changing dynamics of white collar crimes in India shows that over the past 10 years, the central bureau of investigation (CBI) has prepared 6,533 corruption cases, of which 517 have come up in the past two years.

Further, an estimated Rs.4,000/- crore of trading is carried out on the BSE using fake or duplicate PAN Cards and online fraud is on the rise with Maharashtra reporting 999 cases. India's share in black money concealed across global tax havens is estimated to be \$181 billion and the situation is grim.

On its part, the government has launched several initiatives to tackle fraud, bribery, corruption and other white collar crimes. Recent data suggest that some forms of crime might have moderated of late.

In 2015, India ranked 76th on Transparency International's Corruption Perception Index (CPI), up from 85th in 2014. This improvement in ranking mirrors the fall in corruption complaint's received accordingly to the report, the number of corruption complaint received by the chief vigilance commissioner declined from 64,000/- in 2014 to 29,838 in 2015. But, despite this improvement, India ranks lower on CPI.

Perceptions over the extent of corruption in India also seem to have improved in 2016, 58% of survey respondents felt that bribery and corruption are ongoing challenges in India-down from 70 in 2012. The global average for 2016 is 39%.



6. LAW 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 (i.e. FERA) and import and export laws are frequently resorted to for the sake of huge profits. Further, adulteration of food stuffs edibles and drugs which causes irreparable damage to public health is yet another white collar crimes 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 amount to white collar criminality. Some of these legislations are Essential Commodities Act 1955, the Industrial (development and regulation) Act, 1951.

- Central Excise and Salt Act, 1944
- Companies Act, 1956.
- Drugs and Customs Act, 1940
- Emblems and Names (Prevention of improper use) Act, 1950
- Essential Commodities Act, 1955
- Foreign Corrupt practice Act, Foreign exchange regulation, forward contracts (regulation act, 1952)
- Immoral Traffic (prevention) Act, 1956
- Income Tax Act 1961
- Narcotic Drugs & Psychotropic Substance Act, 1985
- Prevention of Corruption Act, 1988
- Prevention of Food Adulteration Act, 1954
- The Anti-corruption Laws (Amendment) Act, 1961
- The Anti-corruption Laws (Amendment) Act, 1967
- The Central Vigilance Commission Act, 2003
- The Custom Act, 1962
- The Import and Exports Control Act 1947
- The Foreign Exchange Management Act, 1991
- Companies Act, 1956
- Prevention of Money Laundering Act, 2002

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 (know your customer) guidelines. The banks and financial institutions are required to maintain the records of transactions for a period of ten years. In order to tackle with computer related crimes. Information Technology Act 2000 has been enacted to provide legal recognition to the authentication of information exchange in respect of commercial transactions. Sec.43 and 44 of Information Technology Act prescribes the penalty for the following offences.

- Unauthorized copying of an extract from any data.
- Unauthorized access and downloading files.
- Introduction of malicious programs.
- Damage to computer system or computer network.
- Denial of access to an authorized person to a computer system.

- Providing assistance to any person to facilitate unauthorized access to a computer. Though the focus of information technology act is not on cybercrime as such, this act has certain provisions that deal with white collar crimes. It also deals with penalties and adjudication of crime apart from this, many issues are unsolved due.
- Inapplicability
- Qualification for appointment as adjudication officer not prescribed
- Definition of hacking
- No steps to curb interest piracy.
- Lack of international cooperation
- Power of police to enter and search limited to public places.
- Absence of guideline for investigation of cybercrime.

7. WHY CYBERCRIME IS WHITE COLLAR CRIMES?

White collar crimes occur in large and complex organizations. These offences are committed by people with sophisticated understanding of finance, management, engineering, medicine, organizational theory, information technology etc. The federal bureau of investigation has opted to approach white collar crimes in terms of the offense. The bureau has defined white collar crimes as "those illegal acts which are characterized by deceit, concealment or violation of trust and which are not dependent upon the application or threat of physical force or violence. Individuals and organizations commit these acts to obtain money, property or services or to secure personal or business advantage" clearly in all cases of cybercrime one need not to use physical violence, need not to hold a gun at someone's head nor swash a sword at another's throat. Cybercrime cannot be committed unless you are knowledgeable and competent and such persons usually have a good standing in the society which factor fits cybercrimes into the classification of white collar crimes. Since all person who are competent cyber technologists need to have a high standing in society, Sutherland's definitions as being euphemistic where the phrase "respectability and high social status" is intended to cover those who are capable of using skills and knowledge as a basis for committing crimes. Cybercrime readily fit into the classification of white collar crimes. All Cybercrime satisfy the three elements contained therein, deceit, concealment and violation of trust and hence they readily qualify to be white collar crimes for the purpose of prosecuting them. Their target and modus operandi is very different from common white collar criminals.

8. CONCLUSION

India has started responding to cybercrimes by prescribing civil and criminal liabilities for certain activities in cyberspace in the information technology. However, there is a need for addressing this issue in a comprehensive manner. This can be achieved by bringing in a legislation that exclusively addresses substantive law relating to cybercrimes. This could also be achieved by integrating the real world crimes and virtual world crimes in an integrated code by carrying out necessary amendments in the Indian Penal Code. Such legislation is necessary to protect the interests of Indian Organization as well as individuals, including their right to privacy. Procedural aspects are also not sufficient to deal with cybercrime. Sec. 78 and 80 of the Act deals with certain issues related to investigation, search, seizure and arrest and also make the provisions of criminal procedure code applicable to any entry search or arrest made there under.

Cybercrimes are not territorial crimes. Therefore, only national efforts is not sufficient to prevent it. It requires global efforts and step towards increasing intentional coordination and cooperation

in fighting cybercrimes mechanism, similar to that of 24/7 networks suggested by council of Europe Convention, may be adopted for coordinating with intentional agencies for real-time collection of traffic data, interception of content data, preservation of stored data, search and seizure of computer data.

9. SUGGESTIONS

The purpose of punishment deter the accused from repeating the crime in future and may be a warning to those who are like-minded the law should be lenient in fixing punishment to white collar crimes or socio-economic criminal for example hundred of persons died after drinking country made liquor which contaminated with some poisonous material. The punishment for such an offence under the base act is nominal.

- Thus harsh punishment should also be given to white collar crimes.
- The criminal liability for socio-economic offences should be made
- The penalty might be extended up to sentence of death or life imprisonment the circumstances no demand.
- At every step the need is to the efforts should be made to create public awareness against these crimes through media of press platform & other audio-visual aids.
- Special tribunals similar to fast track courts should be constituted with power to award sentence of imprisonment upto ten years even life imprisonment for white collar crimes.
- More stringent regularity laws & punishment for white collar crimes for effective implementation with a clear message of deterrence.
- Indian Penal Code should have separate chapter on white collar crimes so that white collar crimes connected by the court and do not escape punishment because of high social status.
- Public vigilance will always be required to have a positive change in the longer run.

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