



White-Collar Crime in India and Its Impact on Society: A Legal Analysis

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LL.B.V th Semester

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ARTICLE DETAILS

Research Paper

Keywords :

*Crime, Offence, White Collar
Crime, Society, Impact.*

ABSTRACT

This paper provides a detailed understanding behind the motives of people committing crimes. The prevalence of whitecollar crimes in India, they are spreading like a rapid fire in every sphere of society. The widespread political, social, economical and technological changes as well as variation in legislation, procedures and policies in different countries on mutual assistance in criminal matters have allowed this whitecollar white collar crime groups to become increasingly active in the international arena. These kind of criminal groups arena taking full advantage of globalization of world markets, dismantling of trade barriers, and the liberalized migration policies, high-tech communicated equipments and sophisticated electronic techniques to enhance their deviant activities. White collar criminals are engaged in such felonious activities such as, fake employment placement rackets, black marketing, medical deviant activities, tax evasion, cybercrime, and credit card fraud and procedure large profit and create the incentive to “legitimate” the ill-gotten gains through money laundering and many more.

Introduction

White-collar crimes occur in large and complex organisations. These offences 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 reduced revenue for the treasury, bribery lead to biased governmental decision- making, inside trading leads to loss of investments in investors¹. 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 arena².

Meaning of White-Collar Crime

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 measure³.

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.
- 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.

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:

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, defence 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

Causes of White-Collar Crimes:

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 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 do not resemble street crimes.

Lack of awareness: One of the main reasons 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 is 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 commits white collar crimes in order to satisfy their ego or support their family.

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 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 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 unauthorized copying of an extract from any data and providing assistance to any person to facilitate unauthorized access to a computer.

Judicial Attitude Towards White Collar Crimes in India:

The Narcotic Drugs and Psychotropic Substances Act, 1985 prescribes stringent punishments. Hence a balance must be struck between the need of the law and the enforcement of such law on the one hand and the protection of citizens from oppression and injustice on the other. The provisions under the special Act are to be followed meticulously since the punishments are stringent. The judgments of the Supreme Court of India and various High Courts are guiding force and have been referred in detail.

Provision of Section 50 of Narcotic Drugs and Psychotropic Substances Act 1985 is mandatory.

The Supreme Court of India in *Ali Mustafa Abdul Rehman Moosa v. State of Kerala*⁵, where Sub-Inspector of Police received reliable information that a foreigner was waiting in the first class waiting room with huge quantity of charas. The SI of police went to the first class waiting room and found one Ali Mustafa, a Kuwaiti National. He was searched and 780gms. of charas was recovered from his possession. The accused Ali Mustafa was convicted and sentenced to imprisonment for 11 years and to pay fine of Rs. one lakh by the Court of Sessions. The matter went up to Supreme Court in appeal.

However in *State of Punjab v. Balbir Singh*⁶, the Supreme Court has held that if a police officer without any prior information as contemplated under the provisions of NDPS Act makes a search or arrests a person in the normal course of investigation into an offence or suspected offence as provided under the provisions of Cr.P.C. and when such search is completed at that stage section 50 of NDPS Act would not be attracted and the questions of complying with the requirements there under would not arise. If during search or arrest there is a chance recovery of any narcotic drug or psychotropic substance then the police officer, who is not empowered, should inform the empowered officer who should thereafter proceed in accordance with the provisions of the NDPS Act. Then the empowered officer shall carry out investigation as per provisions of NDPS Act from that stage onwards.

In *Ashok Kumar v. State of Haryana*⁷, the accused Ashok Kumar was searched in presence of a Magistrate while alighting from a bus and was found to possess 5 kg & 500 gms of charas. The Magistrate was examined as a witness, but he was unable to identify the accused during trial. The Investigating Officer identified the accused during trial. The accused was convicted under Section 20 of NDPS Act by the Special Court. The High Court also affirmed the conviction and sentence passed by the Trial Court. It is contended on behalf of the defence before the Supreme Court that the fact of seizure of contraband article should be disbelieved in the absence of independent seizure witness. The Supreme Court upheld the conviction and sentence of the accused person even in the absence of independent witness of search & seizure.



No matter how we enact laws and various control regimes in the and it is judiciary, which, in any Legal system, is responsible for administration of justice.

The case of *Yahoo, Inc. v. Akash Arora*,⁸ was the first case where an Indian Court delivered its judgment relating to domain names. The plaintiff Yahoo Inc. instituted a suit in the Delhi High Court against the defendants seeking inter-alia a decree of permanent injunction restraining the defendants, their partners, servants and agents from operating any business and/or selling, offering for sale, advertising and in any manner dealing in any services or goods on the internet or otherwise under the trademark/domain name 'Yahooindia.com' or any other mark/domain name which is identical with or deceptively similar to the plaintiff's trademark 'Yahoo!'. The plaintiff also moved an application seeking temporary.

In this case, instituted by Yahoo! Inc., the Delhi High Court granted an interim injunction restraining the defendants from operating any business or selling, offering for sale, advertising and/or in any manner dealing in services or goods on the internet or otherwise under the trademark/domain name "Yahooinida.com" or another trademark/domain name which is identical! with or deceptively similar to the plaintiff's trademark "Yahoo!".

In another matter *Rediff Communication Ltd. v. Cyber Booth*⁹, the Yahoo judgment was once again reiterated. In this case, the plaintiff filed a suit for permanent injunction for inter alia restraining the defendants from using the mark/domain name 'RADIFF' or any other word or work or name which is deceptively similar to the plaintiff's mark/name 'REDIFF'. Bombay High Court granted an injunction against the defendants. The Special Leave Petition filed by Cyber booth in the Supreme Court was also dismissed. Though the Cyber Law was passed under the Information Technology Act in 2000, but the corporate houses have been shy of reporting cyber-crimes fearing adverse publicity which results into less judicial pronouncements. Only conviction reinforces the confidence of the people in the capability of the law enforcement agencies to crack cyber crime and in the Indian judicial system's resilience in dealing with new challenges in the cyber age.

Lalit Goel v. Commissioner of Central Exercise,¹⁰ this Court, while dealing with bail application in a case of Customs Act, observed that the economic offences constitute a class apart and need to be visited with a different approach in the matter of bail. Noticing ever growing materialistic outlook setting unscrupulous elements on a prowl to maximize material gains by unlawful means, this Court even suggested appropriate legislative measure and judicial intervention to safeguard the interest of the State and public at large.



The Supreme Court in *Prashant Kumar v. Mancharlal Bhagatram Bhatia*,¹¹ has held economic offences are increasing all the time. The smugglers disrupt the economy of the nation and erode the valuable foreign exchange. It is necessary to facilitate the investigation into economic offences and the remand courts should not ignore this aspect while considering the question of liberty of a suspect. It should be born in mind that the common good of the society should be properly balanced against the individual liberty.

Conclusion

White collar crimes are the crimes which cause harm to the economy of the country as a whole. It threatens the country's economy by bank frauds, economic thefts, evasion of tax etc. It not only affects the financial status of a country or a person but It has also a negative impact on the society. The various crimes such as bribery, corruption, money launder in has affected society in a negative way.

There is no proper definition of White collar crime in Indian laws. These socio-economic Crimes should not be taken leniently by the government. Punishment regarding White collar crime should be stricter as harsh punishments can pre these crimes to a great extent. If the crime is very heinous the punishment might also be extended to life imprisonment. People are not aware about most of these crimes so the public awareness through any Communication medium is also necessary. Government should impose strict regulations regarding economic thefts of the country.

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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