

THE LEGAL LANDSCAPE OF WHITE COLLAR CRIME: A CRITICAL PERSPECTIVE

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Abstract

The term “White Collar Crime” a term first coined by sociologist Edwin Sutherland in 1939, refers to non-violent, financially motivated offenses committed by individuals, businesses, or government officials in positions of trust and authority. Unlike traditional crimes that often involve physical violence or direct harm to individuals, white-collar crimes are characterized by deceit, concealment, and breach of trust, and they typically have significant financial consequences. The rising incidence of white-collar crimes in India has significantly affected the country’s economic stability and growth. The impact of such crimes extends beyond immediate financial losses to undermine economic stability, erode public trust in institutions, and create widespread societal harm.

The present study aims to identify the impact of white collar crimes in the society, to assess the adequacy of the existing statutory laws enacted to deal with white collar crime and to suggest some protective measures to strengthen the existing mechanism.

Keywords: White collar crimes, Economic stability, Financial loss, Societal harm, Statutory laws

Methodology used: This present research is based on the doctrinal method of research, Materials for which have been collected from both primary and secondary sources.. The research work is mainly based on the analysis of statutory laws and decisions of the courts which are used as Primary sources. Books, articles, journals, websites, and newspapers etc. are used as secondary sources for this research work.

Introduction

White-collar crime is one of the major socio-legal issues of the present global situation. Every country, across the globe, is trying to protect the interest of all established institutions suffering from white-collar criminality. The effect of white collar crime has been experienced by developed and developing economies alike, similar to a global epidemic. Countries like India, where white-collar crimes are well known to the common people, it has been a matter of serious concern.. The world’s largest democracy making its way to become an economic powerhouse, the progress of India has been hindered by this endemic white collar criminality. From money laundering, high level bribery, food adulteration, white collar illegality grapples the massive economic and social costs in India.

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Not only considering the financial loss but also how a widespread of this corrodes public trust, exceeds conventional crime damages, widen inequalities and imperil the ethical foundations of a pluralistic nation. This crime wave in India is typically fanned by greed and institutional weakness, but weak hindrance and moral ambiguities surrounding elite deviance also share blame. With growing digitisation, the risk by opening new avenues for transnational offences also amplify. On one hand being viewed as an oasis of opportunity and advancement, ironically, 21st century India finds itself flooded with white collar atrocities.

Meaning and nature of White Collar Crimes

White Collar Crimes are the crimes committed by a person of high social status and respectability during the course of 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. White collar crime has been characterised in a variety of ways, including as a crime perpetrated by a person of respectable or high social standing, or as a criminal done in the course of, one's vocations, as well as a crime involving deception or a violation of trust, as non violent crime under taken for personal gain, as crime that involves a combination of these factor and simply as business crime².

White-collar crimes are fundamentally non-violent, relying on cunning and guile rather than physical force. These crimes are executed through deceit, misrepresentation, and a breach of trust. The lack of physical violence often leads to a misconception that white-collar crimes are less harmful. However, the financial and emotional damage they inflict can be extensive and long-lasting. Perpetrators of white-collar crimes typically occupy positions of respect and authority within their professional environments. They are often business executives, government officials, or professionals such as lawyers, accountants, and doctors. The high social status of these individuals can complicate the detection and prosecution of their crimes. Their positions often allow them to manipulate or obscure evidence, and they may possess the resources to mount formidable legal defences. White-collar crimes are committed in the context of one's occupation. This occupational context means the crimes are intricately linked to the professional roles and responsibilities of the perpetrators. These crimes often involve complex transactions and sophisticated schemes that require expert knowledge.

Historical Baground

The term "white-collar crime" was introduced by the eminent criminologist Edwin Sutherland in the late 1930s Sutherland highlighted a critical gap in criminological research, which had largely focused on street crimes and institutionalized offenders, predominantly from lower socioeconomic backgrounds. He argued that crimes committed by wealthy and powerful individuals—though often more damaging—were not receiving the same level of scrutiny or legal consequence. Sutherland's concept of white-collar crime encompasses illegal acts performed by individuals in their professional roles, such as corporate fraud, embezzlement, and the sale of defective or dangerous products. These crimes are often distinguished from those committed by criminal gangs or lower-class individuals due to the respectability and high status of the perpetrators.

² Sanjeev Mahajan, Criminology and penology 68 (Arjun Publishing House, New Delhi, 1st edn.,2008)

Sutherland observed that such crimes were frequently handled by administrative agencies rather than criminal courts. This meant that the perpetrators were often not labeled as criminals and their actions were less likely to be addressed with the same severity as street crimes. Consequently, white-collar crimes could undermine public trust and damage society's economic and social fabric while often evading significant legal consequences.

The prevalence of white-collar crime has increased with industrial and economic advancements globally. The Indian Law Commission³ has noted that technological and scientific progress, the rise of large-scale enterprises, and the emergence of a managerial class have contributed to the growth of such crimes. The complexity of modern economic and institutional mechanisms, coupled with varying standards of ethical behavior, has created an environment where white-collar crimes can thrive. This underscores the need for stringent ethical standards and effective regulatory measures to combat the emergence and proliferation of white-collar and economic crimes.

In the early 20th century, as businesses expanded and became more complex, opportunities for financial fraud and other white-collar crimes increased. During this period, such crimes were often underreported and not rigorously prosecuted, partly due to the perpetrators' high social status and the perception that these crimes were less harmful than violent offences.

One of the earliest significant cases of white-collar crime was the Teapot Dome scandal of the 1920s, where U.S. government officials were found guilty of accepting bribes from oil companies. This case highlighted the need for greater scrutiny and regulation of corporate and governmental activities.

White collar crime in legal profession

Legal practitioners often for money or other services by their clients, present false evidence, fake witnesses in the court. Legal practitioners with the ministerial support involves in wrongful practices and violate all their ethical standards for some amount of money. Manipulating evidences and faking witnesses by bringing in professional witnesses, gives the case another turn, because of which many times the real accused is left free and the innocent is sent behind the bars.

It was in 2006 when D.K. Gandhi, a resident of Delhi filed a case against the wrong practices of his lawyer. Gandhi had appointed the lawyer for a certain amount of money. The lawyer was supposed to dispose off the case as early as was possible. The case was settled in the first hearing itself and Gandhi was to receive the compensation amount. However, the lawyer refrained from giving the amount to his client, Mr. Gandhi, unless an extra sum of 5,000 rupees was paid to him.

So in the case of D.K. Gandhi v. M. Mathias⁴ when referring to the what the Supreme Court had said in Jacob Mathew v. State of Punjab⁵, held the appeal and left the matter to be decided by the State Commission based upon the law.

³ Law Commission of India. 47th Report 1972 P.12

⁴ D.K. Gandhi v. M. Mathias, 6th August, 2007

⁵ Jacob Mathew v. State of Punjab, (2005) 6 SCC 1

In the case of Jacob Mathews, the Supreme Court had said that: in law of negligence, the professionals from different professions like, legal, medical, or architecture, or any other would be held liable for negligence in practicing their profession if that either of the two given conditions are satisfied: a. He did not have the required skill that was needed to be professed and, b. Even if he has the required skills to be professed, he did not exercise the same.

Root causes behind White collar crimes and its effects

White-collar crime in India, as in many other countries, presents a significant challenge to the legal and administrative systems.

Economic Security and Greed: White-collar crimes are often perpetrated by individuals who are financially secure but driven by greed or the desire to acquire more wealth. This financial security provides them with the means and opportunity to commit such crimes without immediate financial need.

Poverty and Underdevelopment: The widespread poverty in India makes a large segment of the population vulnerable to fraud and deceit. Desperation for financial stability can lead individuals to overlook the authenticity of representations made by white-collar criminals.

Technological Advancement: Evolving Techniques: Advances in technology and business practices have introduced new methods for committing white-collar crimes. The digital age has enabled faster transactions and communication, providing new opportunities for fraud and making detection more challenging.

Digital and Global Reach: The internet and digital platforms have expanded the scope of white-collar crimes, allowing offenders to operate across borders. This global reach complicates enforcement and investigation efforts, as perpetrators can easily hide or move their operations.

Challenges in Law Enforcement: Investigating white-collar crimes often requires specialized knowledge and extensive resources. The complexity of these crimes and the difficulty in tracing digital evidence can lead to insufficient investigation and enforcement.

Also, there are many Challenges in Addressing White-Collar Crime like

Influence and Corruption: The overlap between the socio-economic classes of lawmakers, law enforcers, and offenders can lead to conflicts of interest. Those in power may be reluctant to take action against their peers, resulting in inadequate enforcement of laws.

Inadequate Investigation Efforts : Investigators may face challenges in connecting disparate pieces of evidence and may lack the resources or expertise to handle complex white-collar crime cases. The digital nature of these crimes adds an additional layer of difficulty in gathering evidence.

Legal Framework: Many laws may not adequately address the nuances of white-collar crime, leaving gaps that offenders can exploit. Additionally, existing laws may not provide sufficient deterrence due to lenient penalties.

Ineffective Punishment: The current legal framework may not impose harsh enough penalties to deter white-collar criminals. Without significant consequences, there is little incentive for offenders to refrain from engaging in such crimes.

White-collar crimes can have extensive and far-reaching effects on various aspects of society, including companies, employees, customers, society at large, and even the offenders themselves.

Effects on Society-When individuals in positions of power and responsibility engage in white-collar crimes, it can lead to a broader erosion of trust in societal institutions. This can contribute to a sense of moral decay and cynicism within society.

Challenges in Enforcement: White-collar crimes are often committed in private settings, such as offices or using computers, making them difficult to detect and prosecute. The absence of eyewitnesses and the complexity of the crimes pose significant challenges for law enforcement.

Punishment and Accountability: The perceived leniency of punishments for white-collar crimes compared to blue-collar crimes can lead offenders to view the risks as manageable. This can result in a higher incidence of white-collar crime, as offenders may feel emboldened by the lower likelihood of severe consequences.

Statutory laws against white collar crimes in India

There are several provision that exists for identifying white collar crime. Government in order to ensure that the criminal committing white collar crime be punished has brought in the following legislations-

The Companies Act, 1960-Fraudulent commission is punishable under Section 447 of the Companies Act, 2013. This law states that if a person is found guilty of stealing, he will be sentenced to a minimum of six months in jail and a maximum of 10 years in prison. In addition, he will be subject to a fine of not less than the amount involved in the crime, but not less than three times the amount involved in the fraud the punishment would be no less than three years if the offence was done against the broader public's interest, in prison. Section 448 of the Companies Act, 2013 states that: if a person deliberately makes a false statement, knowing it to be false or deliberately omits any material fact, knowing it to be material than he would be held liable for his wrongful act. This false statement can be made either through return, report, certificate, financial statement, prospectus, statement or any other documents required for the purpose mentioned under this Act or any rules made under it.

The Income Tax Act, 1961-Tax evasion is a type of white collar crime where the person changes their states of affairsto avoid applying tax.

Indian Penal Code, 1860- ndian Penal Code (IPC), 1860: As the cornerstone of Indian criminal law, the IPC covers a broad spectrum of white-collar crimes. Specific sections relevant to white-collar offences include:

Section 403: Addresses dishonest misappropriation of property.

Section 406: Pertains to criminal breach of trust.

Section 409: Deals with criminal breach of trust by public servants, bankers, merchants, or agents.

Section 420: Covers cheating and dishonestly inducing delivery of property.

Sections 465, 468, and 471: Relate to forgery, forgery for cheating, and using forged documents as genuine, respectively.

The Prevention of Corruption Act, 1988- This act specifically targets corruption within public offices. It defines corrupt practices and prescribes severe penalties for public servants engaged in bribery, misappropriation, and other forms of corruption. Key provisions include:
Section 7: Penalises public servants for accepting gratification other than legal remuneration.
Section 13: Defines criminal misconduct by a public servant.

Section 19: Requires prior sanction from the competent authority for prosecuting public servants, ensuring protection against frivolous charges.

The Information Technology Act, 2005-The 'Information Technology Act, 2000' was adopted to offer legal recognition for the encryption of information shared in business transactions in order to combat computer-related crimes.

Sections 43 and 44 of the Information Technology Act specify the penalties for the following offences:

- ☐ Viruses or malevolent programmers are introduced.
- ☐ Unauthorized access and file downloads
- ☐ Copying an extract from any data without permission.
- ☐ Damage to the computer system or network
- ☐ Assisting anybody in gaining unauthorised access to a computer.
- ☐ Denying an authorised individual access to a computer system.

The Central Vigilance Commission Act, 2003-The main purpose The purpose of the Central Vigilance Commission Act, 2003 is to establish a Central Vigilance Commission to examine allegations of corruption or cause investigations into crimes allegedly committed by various types of Central Government public employees under the PC Act of 1988 and Corporations established with their consent or Central Government-owned, managed, or regulated Government Companies, Societies, and Local Authorities, and for issues related to or incidental to them, under any Central Act.

Fugitive Economic Offenders Act, 2018- With such a backdrop and frauds such as the Satyam scandal, escaping Vijay Mallaya, 2G scams, and others, the Indian government approved the Fugitive Economic Offenders Act, 2018 . It aims to penalise economic criminals who conduct white collar crime in India and then flee to another nation to avoid being prosecuted. They are not subject to criminal responsibility and are not subject to the jurisdiction of Indian courts.

Prevention of Money-laundering Act, 2005- This act has helped curb Money laundering domestically and it has also been stretched further beyond borders to curb money laundering related activities due to strict foreign-exchange regulations. Similar to most white-collar crimes, this involves a large number of people being involved But with the rise of technology, it has simplified such tasks and has turned out to be more complex and digital and with the accessibility of the Cryptocurrency platform w new form of money laundering has emerged where criminals can move funds more easily and effectively online across the entire world with

just a click of a button and we lack relevant laws to keep up with these technological advancements. Significant provisions include:

Section 3: Defines the offence of money laundering.

Section 4: Prescribes rigorous imprisonment for money laundering, ranging from three to seven years, which may extend up to ten years in cases involving narcotic drugs or psychotropic substances.

The case of **M.H. Hoskot v. State of Maharashtra**⁶ provides a significant insight into the evolving judicial attitudes towards white-collar crime in India and highlights some crucial aspects of legal and societal responses to such offenses. M.H. Hoskot, a reader at Saurashtra University, was charged with attempting to falsify certificates from Karnataka University. Initially, the session court sentenced him to just one day in jail, a nominal punishment that was influenced by his lack of prior criminal history and perceived unlikely future offenses. The State appealed the session court's decision, and the High Court increased the sentence to three years. This decision reflected a more stringent approach towards white-collar crime, recognizing the gravity of the offense. The Supreme Court further affirmed the High Court's decision, criticizing the session court's leniency. The Supreme Court's assessment indicated a shift towards a more serious view of white-collar crimes, emphasizing that token punishment was inadequate for such serious offenses.

Abhay Singh Chautala v. C.B.I.⁷

There were two appellants in the present case against whom a charge sheet was filed for committing an offence under Section 13(1)(e) and 13(2) of the Prevention of Corruption Act, 1988 read with Section 109 of the Indian Penal Code, 1860 in separate trials. It was alleged that both the accused had accumulated disproportionate wealth as per their income when they were they members of the Legislative Assembly.

When the Central Bureau of Investigation (CBI) initiated its investigation it was found that the father of the appellant had acquired huge properties and same as the case with the appellants. The High Court held that the appellant had provided a totally different office(s) of the accused than they were actually holding at that time. Thus the sanction under Section 19 of the Prevention of Corruption Act, 1988 was held to be without any merit.

Way forward

To effectively address and prevent white-collar crimes, a multifaceted approach is necessary.

1. Strengthening Investigative Agencies: Strengthen key agencies such as the Central Bureau of Investigation (CBI), Enforcement Directorate (ED), Income Tax Department, Directorate of Revenue Intelligence (DRI), and Customs Department.

Policy Implementation: Implement robust regulatory policies to improve the efficiency and effectiveness of these agencies.

Oversight and Transparency: The Central Vigilance Commission (CVC) should oversee and monitor the work of top officials, ensuring transparency and accountability.

2. Enacting and Enforcing Strict Laws

- Introduce and enforce stricter laws with substantial fines and longer prison sentences to deter potential offenders.

⁶ (1978) 3 SCC, 544; 1978 SCC (Cri) 468.

⁷ Abhay Singh Chautala v. C.B.I., (2011)

- Amend existing laws and the Indian Penal Code, 1860, to include comprehensive provisions specifically targeting white-collar crimes. A dedicated chapter on white-collar crimes could enhance legal clarity and enforcement.

3. Establishing Fast-Track Courts and Tribunals

- Set up fast-track courts and specialized tribunals across the country to handle white-collar crime cases efficiently.
- Equip these courts and tribunals with the authority to impose substantial fines and sentences to expedite justice and reduce case backlog.

4. Increasing Public Awareness

- Media Utilization:
 - Awareness Campaigns: Use electronic and print media to educate the public about white-collar crimes, their signs, and preventive measures.
 - Victim Support: Inform individuals about the remedies and legal avenues available if they become victims of white-collar crimes.

5. Implementing Stringent Penalties

- Enhanced Sentencing:
 - Severity of Punishment: Ensure that the penalties for white-collar crimes are severe enough to act as a deterrent. This includes substantial fines and long-term imprisonment.
 - Legal Reforms: Advocate for the amendment of legal codes to reflect the seriousness of white-collar crimes and ensure that the punishment fits the crime.

6. Establishing a National Crime Commission

- Consider establishing an independent body, such as a National Crime Commission, focused solely on addressing and reducing crime, including white-collar crime.
- This body would operate independently to investigate, monitor, and propose solutions for crime prevention, potentially leading to more effective measures and policies.

Conclusion

White collar crimes are the crimes which cause a 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. Addressing white-collar crime requires a comprehensive strategy involving strengthened regulatory frameworks, improved training for investigative personnel, stringent legal measures, efficient judicial processes, public awareness campaigns, and substantial penalties.

The government must make laws that are strict enough to reduce the commission of such crimes. And the system should be such that not only there exist laws giving strict punishment to the accused but also dispose off maximum cases in a short while. If not done so then people will soon lose complete faith in the system, as these crimes are committed by people who should act as a role model for the society.

The media has a key role to play in reducing the rate of increasing white collar crimes. It has been noted that most of the white collar crimes go unreported. So, if the media becomes more active towards publishing frauds and scams at higher levels and revealing how do the people at higher position in a company use their powers arbitrarily, and also make efforts in making people aware about the white collar crimes, and avoid corrupt practices, then this would definitely help in reducing the rate at which the white collar crimes are being committed. By adopting these measures, India can enhance its ability to prevent and respond to white-collar crimes, ensuring greater accountability and protection for society.