

LAW RELATING TO WHITE COLLAR CRIMES: AN ANALYSIS

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ABSTRACT

Crime has increased as the society developed and its types also changed. Newer form of criminality known as white collar crime has arisen. In the field of criminology concept of this type of crime was introduced in 1939 by Edwin Sutherland during his paper presentation in 'American Sociology Review'. After going through literature it reveals that urbanization, industrialization and new structured society in course of time proved to be breeding ground of many malpractices and irregularities in entire commercial, industrial and trade sector in the free countries. These types of criminals generally well educated and by knowing limitations of current laws take advantage of loopholes in the system. To end this there is requirement of impartial, committed and sincere agencies of investigation and enforcement machinery.

1. INTRODUCTION

Criminal law has been as old as civilization. The need has been felt to make rules to regulate the behavior of members of groups or associations of the society and consequently its infractions was evitable and to curb the tendencies in society that lead to violation of its rules lies the necessity of devising some ways. Therefore, the state in certain cases in addition to compensation impose penalties to wrongdoer with aim of promoting good behavior and peace in the society at large. First of all, society or state selected acts for punishment means crime. "Crime is what society says is crime"¹ by considering an act is violation of criminal law. For common man acts are crimes in society "consider worthy of serious condemnation." "Economic crimes the bulk of which are termed as white collar crimes"². These offences are committed by persons of respectability and high social status in course of their occupation³. It shows immunity of criminals from legal process due to their social, economic and political status.

Historical Perspective

In the **ancient period** living to gather of human beings started erupted of crime. White collar crime is not a new phenomenon. Various references are found since vedic period. Indian great law giver felt that there was an age when 'dharma' prevailed in perfect but gradually 'adharma'⁴ made its headway giving rise to offences like theft, falsehood and fraud, bribery, adulteration, crimes of medical profession, defective weights and measures, counterfeit coins.

Modern Period in the last quarter of 18th century was the formation of some jute and cotton mill in India resulted into deteriorate the factories Act, 1881 was placed on the statue book. Criminalistic behavior is inherently present and implicit in extreme business competitiveness and monopoly and thereby white collar crime began to grow in spite of provision of IPC, 1860⁵.

Features of White Collar Crimes⁶

- (i) These crimes are committed by high social status, education, degrees, occupation-doctor, govt. official, advocate, CA, and not hardcore criminals or layman.
- (ii) It differs from traditional crimes as fraud, misrepresentation, adulteration, malpractices, irregularities etc.
- (iii) Committed deliberately with conspiracies.
- (iv) Mostly victims of this crime are community, society or nation.
- (v) Mens rea is not essential elements of crimes
- (vi) Financial loss is greater than other offences committed by lower socio economic class.
- (vii) Absence of fear of punishment i.e fine or imprisonment.

Constitutional Provisions

Under Indian Constitution Article 13,14,226 and 32 basically is to subjugate executive power 'Rule of Law' along with preserve fairness, non-arbitrariness and reasonableness and therefore these values can be enforced speedily through judicial review or administrative action. PIL has proved to be a strong weapon in the hands of courts to unearth many scams and corruption cases in public life for to punish in those i.e fodder scam in Bihar, Urea Scam, Hawala Scam, Medicine Scam, Petrol Pump Scam, Illegal allotment of houses and Commonwealth Scam. In *Registered Society v/s Union of India*⁷ the Supreme Court of India directed senior ministers to pay compensation to Govt. of India as punishment for misusing their discretionary power as minister. Resultantly, it will deter the high official and ministers for misusing their power for personal gain. In the same way in *Shiv Sagar Tiwari v/s Union of India*⁸ the Supreme Court

held Smt. Sheela Kaul the then minister for housing and urban development Govt. of India held liable for using their powers arbitrary, malafide and unconstitutional during allotment of 52 shops and stalls and ordered to pay 60 lakhs as exemplary damages to Government exchequer.

Statutory Provisions

All white collar crimes are not a new concept of our society but it is a result of advancement of science and technology. The Indian Penal Code 1860⁹ is earliest comprehensive and codified criminal law of India includes many such types of crimes and provided punishment such as bribery and corruption¹⁰, counterfeiting of coins and govt. stamps¹¹, offences relating to weights and measures¹², adulteration of food stuffs and drugs¹³, misappropriation of public property and criminal breach of trust¹⁴, cheating, forgery¹⁵ and offences relating documents¹⁶ and counterfeiting currency¹⁷.

Special Laws on White collar crimes

With the passage of time social and economic structure of the India has changed to such a large extent that earlier Indian Penal Code does not reflect the present day needs therefore quite a few other enactments specifically framed to deal with these types of crimes are: Food Safety and standards Act, 2006¹⁸; Essential commodity Act, 1955¹⁹; Narcotic drugs and psychotropic substances Act, 1985²⁰; Copy right Act, 1957²¹; Prevention of corruption Act, 1988²²; Transplantation of human organs Act, 1954²³; Information technology Act, 2000²⁴; Foreign exchange management Act, 1999²⁵; Prevention of money laundering Act, 2002²⁶; Punjab prevention of human smuggling Act, 2012²⁷; Conservation of foreign exchange and prevention of smuggling activities Act, 1974²⁸; Income Tax Act, 1961²⁹; Benami transactions (Prohibition) Act, 1988³⁰; Punjab right to service Act, 2011³¹.

Judicial Approach Towards White Collar Crimes

Without adequate enforcement laws have no meaning and due to that our Constitution has put in place an elaborate judicial system the Supreme Court at the highest. Therefore, when executive refused to act and legislature could do little about it then judiciary stepped into save duty. To control these crimes Public Interest proved to be strong and potent weapon. Therefore, through interference by judiciary assists in the eradication of these crimes³².

In **Subramanium Swami v/s Dr. Manmohan Singh**³³ Justice A.K Ganguli depicted the present scenario of corruption in the words “Today Corruption in our Country not only poses a grave danger to the concept of Constitutional grievances but also threats very foundation of Indian democracy and Rule of Law. Therefore, courts are obliged to interpret and worked out in such a manner as to strengthen the fight against corruption.

In **State of Tamilnadu v/s Kalia Perumal**³⁴ the Supreme Court held that Sec. 18 of Probation of offenders Act and Sec. 360 of Crpc. is not applicable to the offences under PC Act, 1988.

In **Sarjoo Prasad v/s State of Uttar Pradesh**³⁵ the Apex Court held that mens rea which is some state of a guilty knowledge of adulteration of food is not to be proved for an offence under Sec. 7 of the Act.

In the same way in **Jagdish Prasad v/s State of West Bengal**³⁶ the Supreme Court considered crime under the Act are antisocial affecting health and well being of our society and therefore legislation taken more drastic step for prescribing minimum sentence and minimum fine to be awarded even for first offence.

In **Josh Karan Rathi v/s St. of West Bengal**³⁷ the Supreme Court held that accused was found to have stored pulses in excess of permissible limit and declared collector order for its confiscation justified under Essential Commodities Act, 1955 to regulate and free flow of basic commodities to all individuals of the society.

In **State of Gujarat v/s Mohanlal Sitamalji Porwal and Ors.**³⁸ The Supreme Court held that unfortunately in the last few years the country has seen an alarming rise in white collar crimes which has affected the fibre of the country's economic structure. These acts are nothing but private gain at the cost of public and lead to economic disaster. In this case also, if not national interest, but in view of the rampant white collar crimes in the field of corporative banking business of the state, it can be hardly denied that it has adversely affected the economic conditions of the public at large in general and class of depositions in particular whose life saving money is higher deposited or whose livelihood is dependent on the income of interest.

2. REVIEW OF LITERATURE

Although literature on these crimes is immense but not exhaustive. Moreover, it contains very basic concepts under the realm of criminal law like definition, nature, interrelation of white collar crimes along with conventional theories crime scope of criminology, sanction etc. Issn this article the author by reviewing literature chalked out research gap prevalent in such research.

According to **Sutherland**³⁹ crime committed in upper white collar class, composed of respectable or at least respected business and professional men. He was first person to draw attention of criminologists towards this much neglected

field. He studied criminal behavior of business and professional men and effect cost of such crimes. He laid more emphasis on social status of offender.

Tappan⁴⁰ is of view that these crimes cannot be constituted as crimes because of four reasons. Firstly, criminology studies the behavior of those who violate law and white collar criminals do not fit technically within the realm of criminology as they do not violate law but merely have antisocial behavior. Secondly, what constitutes crime is itself not clear as the father of the term has himself penned down three different definitions of term, Thirdly, he pointed most of white collar criminals are driven by 'greed' and not 'need' which is specific feature of crime and fourthly, he pointed that criminals are those who have been adjudicated as such by courts whereas these crimes also include violations of civil law. Therefore, he argued that white collar crime is not crime.

Newman⁴¹ considered these crimes resulted as part of deviation from occupational role of violator. He centers the appropriateness of white collar crimes around three major issues. Firstly, are law violators in question really crimes. Secondly, can behavior of offenders in these crimes equated with primary behavior and thirdly, what is to be granted other than confusion and imprecision by reformation of definitions of crime to include behavior customarily 'punished' civilly or by administration action rather than by conventional and probably more precise, criminal procedures? After going through legal basis of white collar crimes he concludes that in real sense white collar crimes are crimes in real sense,

To explore new solutions, to recommend equitable changes author has undertaken this study to analyze above existing literature in relation to white collar crimes in India.

3. CONCLUSION

After analysis of literature it reveals that urbanization, industrialization and new structured society in course of time proved to be breeding group of many irregularities and malpractices in entire corner industrial and trade sector in free countries.⁴² Under important pillar of society has taken a serious note of growing intensity of white collar crimes. In this connection PIL has proved to be strong and potent weapon for pushing offender. Unless these crimes abhorrent to public mind, it will not be possible to contain this growing menace

4. SUGGESTIONS

- (1) Non-government organization should take effective steps to nipping these crimes in bed.
- (2) Negative publication of white collar crime in public can also plays vital role to resist it.
- (3) These types of offender must be boycotted by society.
- (4) Public must not purchase these goods connected with white collar crimes.
- (5) People must insist bill for purchasing goods.
- (6) To get detailed information about Acts deals with these crimes at grass root level.
- (7) Create public awareness through audio-visual aids is essential.
- (8) Social stigma must be attached to these crimes.
- (9) The nexus b/w politician, bureaucrat, corporate criminals should be checked and controlled.

5. REFERENCES

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