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EVIDENCE IN WHITE COLLAR CRIMES

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ABSTRACT

In today's world, we see a different category of criminal offence happening which is popularly known as the "White-Collar Crimes". Terms like "white-collar crime" and "economic crime" are most of the time used as one word to denote the same meaning, but in actual both the terms are having their own different meanings. Crimes like "white collar crime" cause serious effects on the corporate system, economy and on the individual with pecuniary loss. Crimes which are mostly committed by the high-class society and are from reputable groups of societies and such crimes are committed during the course of their work/profession are "white-collar crimes". In other or easy words, we can describe "white-collar crimes" as crimes that are easily motivated through strong finances and which are not violent in their nature being committed by big business tycoons and government officers on the high post. Financial scams, fraud, money laundering, tax evasion are some kinds of "white-collar crimes" which hinders and causes negative effects on the corporate system of the economy and on the individual. People who are committing such crimes are having a much better knowledge of technology, systems and their respective fields. Such crimes are common nowadays and are evolving day by day. White-collar crimes are mostly committed in large groups of organizations & MNC'S and such crimes are very common to trade commerce, education & health sector. New laws have been introduced by government enforcement agencies and regulators to prevent such crimes and have made the provisions related to penalties harsher in India. MNC's in the corporate sector now take the regulations and laws more seriously and are taking steps to follow the guidelines with respect to the "regulatory & statutory framework" formed. In today's time, the nation is fighting over corruption and against such crimes in the economy but the statistics show that India still ranks poorly when we talk about corruption in the legal system. This research paper tries to show the "trend of white-collar crimes" causing effects on the corporate system, economy and on the individual with "major legislative measures to deal with such crimes in India".

Keywords - White Collar Crimes, Economic Crime, regulatory & statutory framework, trend of white-collar crimes, major legislative measures to deal with such crimes in India

CHAPTER 1: INTRODUCTION

“Crime committed by the persons of respectability and high social status in the course of their occupation is known as White-Collar Crimes – **Edwin H Sutherland.**”¹

Almost a century ago Dadabhai Naoroji was asked why India was poor and backward and notwithstanding its immense natural human resource. He tried to search the answer after devoting his valuable time, energy and restless efforts to look into government publications and other materials both in India and Britain. He found that India was poor not because its people were lazy but owing to the fact that a part of what they were producing was being drained away by the foreign rulers through an intricate mechanism and was thus not available either for consumption or capital accumulation in India. Thus, a crime of robbery was being regularly committed by foreign rulers against the people of India protected under the roof of law. In today’s scenario, it has taken a wider role in every area of business such as the Commonwealth Games Federation, Cricket, Coalgate and Vyapam Fraud. If we talk about the reasons for such crimes in the economy is that the greed of the people are never-ending and they just want to make more money by going against their professional standard of ethics and moreover they are not afraid to commit such crimes due to loopholes present in the current legal system by which they get protected and are not punished easily for their work. “White-collar crime” includes “misinterpretation in advertising”, “violation of Labour laws”, “violation of copyright and patent laws and financial manipulation.” However, it will be wrong to say that all the crimes committed by the big business tycoons or government officers at senior level posts are “white-collar crimes”. A crime which basically relates to their job or occupation and is occurred during their “professional time” is attributed as a “white-collar crime”. But on the contrary for example, if a rich and a powerful businessman criminally assaults or misbehaves with his personal assistant or any staff present during the office hours would be committing a crime but not a crime which would be termed as “white-collar crime”, thus Sutherland had also differentiated between the “occupational crimes” and “white-collar crimes”.²

¹ Prakash, *White Collar Crimes: Detail Study*, Legal Services India, <http://www.legalserviceindia.com/legal/article-530-white-collar-crime-detail-study.html>

² Rohit Bura, *633 Word Essays on Occupational Crime*, Preserve Articles, <https://www.preservearticles.com/essay/633-words-essay-on-the-occupational-white-collar-crime/28887>

CHAPTER 2: SEGMENTS OF WHITE COLLAR CRIME

There are several segments of “white-collar crimes” which makes them different from other crimes.

- Should have violated any legal code.
- Should have taken place directly or indirectly with respect to their professional time.
- Should take place against the society or economy at large and not against a specific person or a corporate firm.
- As such crimes are against society or an economy at large, therefore there are negative effects of such crimes and are very serious in nature as they cause economic loss to society.
- Earlier it was misunderstood by various definitions that a person with “high social status” who is committing a crime would be considered as “white-collar criminal”, but now it can be seen that any individual/person would be described as an “occupational offender” if he/she has committed the crime in the course of their professional time irrespective of their status and class in the society.
- It aims at gaining money.
- A person committing a “white-collar crime” doesn’t regard himself/herself as a “criminal in the society” as he/she is not afraid of getting prosecuted due to loopholes in the current legal system. The person regards himself/herself as a “lawbreaker whose act has no victim”.

CHAPTER 3: CLASSIFICATION OF WHITE COLLAR CRIMES

The various types of “white-collar crimes” include:-

- Cyber Crimes
- Bank Fraud
- Bribery
- Forgery
- Copyright Infringement

- Insider Trading
- Money Laundering
- Tax Evasion
- Cellular Fraud

White-Collar Crimes in Legal Profession: As nowadays we see commercial relationships between the corporates, insurance and banking agencies, the need for legal professionals and counsels has also increased in the society. There are various complexities in such relationships that now have given birth to the next class of advocates who in the “name of providing justice are now abating the wrong and thereby pursuing their own narrow interest” in such relationships by not following the proper code of conduct. Such professionals also forgot the professional ethics which they should follow in serving the society and instead of that they help “big business tycoons” and “senior-level politicians” in hiding their crimes and help them to grow richer. Such advocates can be seen following unethical practices like “fabricating false evidence”, “engaging professional witnesses”, thereby “violating ethical standards of the legal profession and dilatory tactics in agreement with the ministerial staff of the courts.”

White-Collar Crimes in Engineering: Today engineers are also involved in “white-collar crimes”. There have been cases where the engineers were seen passing the substandard and low-level contracts and materials to make more profit from the contract and assignment as they have high-profit margin while passing substandard or low-level materials in any contract and less margin of profit in the passing of standardized or high-level materials in any contract, thereby risking the lives of people in the society just to make more illegal profits. World’s best example is the collapsing of the foot-over Bridge 12 days before the opening of the Commonwealth Games in the year 2010.

White-Collar Crimes in the Medical Profession: “White-Collar Crimes” have now touched the medical profession also and corrupt practices by medical professionals are very common in today’s time. In India, if we talk about, there have been instances where medical professionals were found in corrupt practices of issuing “fake certificates”, “selling out samples of medicines and drugs and even adulterated drugs”, “carrying out illegitimate abortions”, “faking the condition of health of a patient” just to extract and gain huge amount money from them. In the very famous “Nithari Case”

the peak level of brutal character was shown by the medical professionals who proved that how much they reach for making money. There have been cases where the medical professional didn't have the license to practice or was in the process of getting the license but still, he/she was in the profession and some cases where the doctor turns out to be a fake doctor with no degree and license to practice at all who was treating the patient. These people are not afraid of getting prosecuted or punished due to their high-status contacts in society. There have been cases of misleading and fake advertisements "claiming absolute cure is also one of the frequent malpractices being carried out in the medical profession".

White-Collar Crimes in the Field of Education: As we now talk about the "white-collar crimes in the field of education", the educational institution plays an important role in such types of crimes where private institutions are running their business of education and are not interested in providing any education to children thereby destroying the future of children in school and universities. Various rackets are operating in such institutions where students are given permission to appear in the examination with fake certificates by taking money from their parents in return thereby "damaging the standards of education in the society". Various government teachers and staff are found in corrupt practices of providing certificates, attendance, marks, grades in return of some amount of money and teachers of such institutions are found "ragging the students to go for private tuitions" and if the students or parents deny the same the teachers are found blackmailing them that they will destroy the future of the child.

White-Collar Crimes in the Corporate Sector: In today's time if we look at the statistics then we can see that only a negligible percentage of "white-collar crimes" are reported or cases against such crimes are reported in day to day life. Such crimes are basically carried out by "big business tycoons", "government officials" at senior level posts and "senior level politician" who are greedy to make huge profits from scams and can cause damage to the economy and society for their greed. This greed makes them do nasty things that come under the focus of the media and in the major scandals during the thorough investigation. Political parties' unlawful involvement are also often highlighted in various scams, so far as the "businessmen are concerned their acts of white-collar crimes go beyond count."³ Such criminals are termed as "Corporate Criminals" who are involved

³ Dr. Gyanendra Kumar Sahu, *White Collar Crimes: A Legal Challenge On Indian Corporate System*, IJCR, August, 2015

in “illegal contracts”, “combination and conspiracies of trade restraints”, “unfair labor practices”, “selling adulterated foods and drugs”, “bribing public officials”.

White-Collar Crimes in Universal: When the work is totally planned and carried out in such a manner that nobody can point out the finger implies that it is a highly technological and advanced fraud which can be found out later as a bigger scam. Such scam ultimately hinders the national security of the country and causes damage to the various government policies which are further resolved in such a manner to make huge profits from them.

CHAPTER 4: MAJOR EFFECTS OF WHITE COLLAR CRIME

Effect of a “white-collar crime” has a negative impact on the society or economy at large as compared to any ordinary crime. The average loss in a “white-collar crime” is very much higher than other crimes involving theft or burglary as crimes under “white-collar” mostly includes big scams by “big business tycoons and senior-level politicians” who are involved in scams of thousands of crores which only affect the society, thereby disturbing the economy. As compared to ordinary crimes, “white-collar crimes” causes disturbance in the economy, hinder various governmental policies and regulations, lowers the public interest in the economy and paying taxes while ordinary crimes can only cause inconvenience to a particular individual. “Although huge numbers of white-collar crimes are committed within the society yet only a few of the white-collar crimes offenders are prosecuted and punished.” A good number of people go free without even getting prosecuted and punished due to their “high social status” and contacts among various “big and influential political parties” in society. Such criminals have thinking of not recognizing themselves as criminals at all as they have not harmed any particular individual and for them doing a scam of thousands of crores is a small thing. If we talk about the legislation and legislative bodies to stop such corrupt practices then such legislations and bodies are not capable enough to tackle such practices as many officials in such bodies are corrupt who are also involved in big scams by playing some minor role for some amount of commission and if anyone tries to amend such legislation by bringing up some strict punishments and penalties then he/she is stopped by the “big influential politicians”.

CHAPTER 5: SOCIAL RESPONSE & CRITICISM TOWARDS WHITE COLLAR CRIMES

SOCIAL RESPONSE:

Why is there a difference between the social response in a “white-collar crime” and “other crime”?

There is a difference between the social response in a “white-collar crime” when compared with the other crimes because the laws violated in a “white-collar crime” are not mentioned in a “particular code as a bulk” and moreover scams done by “big business tycoons and senior-level politicians” are sometimes not brought up by the legislative bodies and such crimes goes unnoticed whereas other crimes are mentioned in the criminal and civil codes which have a greater social response. “Sutherland offers three explanations for laying emphasis on administrative rather than judicial agencies, the status of the given occupation, the general trend away from punishment, and the relative lack of resentment of the public against white-collar crimes”.

CRITICISM:

Why the label of criminal status is applied only to “conventional offenders” and not to “white-collar offenders”?

The label of criminal status is applied only to “conventional offenders” and not to “white-collar offenders” because scams and crimes in white-collar are not at all easy to detect. Various legislative bodies are not able to bring up case and are insufficient in collecting the evidence to prove a crime to be a “white-collar crime” and moreover many government officials in such bodies are corrupted and are payed heavy commissions so that they do not bring up the case, thereby it becomes difficult to prove the case and the offenders are set free without any punishment and sometimes without any prosecution too and sometimes “because of the general repute of their occupation” The judges who deal with such cases lives in fear that if they will prosecute or will give punishment to such offenders then “senior-level politicians” can harm their image and post and moreover it is mostly observed in our society that “white-collar crimes” are only committed

by an individual of “high status in the society” and such individuals are “free of criminality” and crime committed by an individual of “lower status in the society” can be termed as a criminal but in real any crime can be committed by any individual of any class of the society. A lower-class individual can also commit a “white-collar crime” and an individual of “high-class status” can commit a conventional crime in society.⁴

CHAPTER 6: LAWS AGAINST THE WHITE-COLLAR CRIMES

There are various acts and legislations in India to control socio-economic offences. To name a few, “The Income Tax Act 1961”, “The Customs Act 1962”, “The Essential Commodities Act 1955”, “The Industrial (Development and Regulation) Act 1951”, “The Import and Exports (Control) Act 1947”, “The Foreign Exchange (Regulation) Act 1973”, “Companies Act 2013”, “Prevention of Money Laundering Act 2002”, “The Indian Penal Code 1860”, “The Information and Technology Act 2000”, “The SEBI Act 1992”, “The Prevention of Corruption Act 1988.” For checking cybercrime IT ACT was formed. Agencies like “CBI”, “Income Tax”, “RBI” and “Lokayukta” are present to keep a check on the “white-collar crimes”. Reserve Bank of India has been consistently working to eradicate the white-collar crimes (banking frauds, insurance frauds) from society. A new concept of “KYC i.e Know Your Customer” which was initiated by the RBI to vanish “white-collar crimes” is also having a positive development. From 1992 SEBI is playing a major role in controlling such offenses. It has laid strict rules and regulations with regards to white-collar crimes and has imposed strict and heavy penalties on such wrongdoers.⁵

The offence of “tax evasion is punishable under Chapter XXII”⁶. If an individual “fails to fulfil the necessity of filing the income tax returns” as laid down under “Section 139 (1) of the Income Tax Act, 1961,” then a “fine of rupees 5,000 or more could be imposed”.⁷

⁴ Rohit Bura, 220 Words Essay on Societal Reaction, Preserve Articles, <https://www.preservearticles.com/essay/220-words-essay-on-the-societal-reaction/28898>

⁵ B&B Associates, *White Collar Crimes: A Detailed Analysis*, B&B Associates LLP (Jul. 20, 2020), <https://bnblegal.com/article/white-collar-crimes-a-detailed-analysis/>

⁶ The Income Tax Act, 1961, No. 43, Acts of Parliament 1961 (India)

⁷ *Tax Evasion Through Foreign Assets To Be A Criminal Offence*, The ET, March 02, 2015

Giving false information under form 26AS: Under “Section 203AA of the income Tax Act, 1961 one is required to fill in Form 26AS.” “Any wrong information would lead to severe punishment so it is necessary to look into the information which has been provided. Similarly, the person would be punished even if he/she has provided wrong information regarding income, expenses or investment”.

Punishment for not paying self-assessment tax: If an individual fails to pay, either the entire sum or partial sum, self-assessment tax then under “Section 140A (1) of the Income Tax Act, 1961” then that “person would be considered as a defaulter”. If the person does not provide a justified reason for the delay in payment, the assessing officer under “Section 221(1) of the Income Tax Act, 1961 may impose a penalty.”

Some of the sections of the “Indian Penal Code, 1860” formed against “white-collar crimes” are:

| SECTIONS | OFFENCE |
|-------------------|--|
| 168 | <i>Public Servant Unlawfully Engaging in Trade</i> |
| 169 | <i>Public Servant Unlawfully Buying or Bidding For Property</i> |
| 171B | <i>Bribery</i> |
| 171C, 171D | <i>Undue Influence at Elections, Personation at Elections</i> |
| 171E | <i>Punishment For Bribery</i> |
| 171F | <i>Punishment For Undue Influence or Personation at an Election.</i> |
| 171H | <i>Illegal Payments in Connection with an Election.</i> |
| 274 | <i>Adulteration of Drugs</i> |
| 403 | <i>Dishonest Misappropriation of Property</i> |
| 405 | <i>Criminal Breach of Trust</i> |
| 415 | <i>Cheating</i> |
| 463 | <i>Forgery</i> |
| 489A | <i>Counterfeiting of Currency</i> |

CHAPTER 7: SCENARIO OF SUCH CRIMES IN INDIA

A report titled “*The Changing Dynamics of White Collar Crime in India*” was published in 2016 by The Business Standard stating within the 10 years, the “Central Bureau of Investigation (CBI) has found cases of corruption which were around 6,533 out of which 517 cases were registered within the past two years.” As per the research done mostly trading was done by using the clone Pan Cards which amounts to 4,000 crores. Moreover, the report also shows that because of the stealing of card details of around 3.2 million people from the “YES Bank ATMs”, people suffered losses which were “administered by Hitachi Payment Services”.⁸ There was also a rapid increase in the online cases which amounts to 999 being registered only in Maharashtra.

CHAPTER 8: LANDMARK WHITE COLLAR CRIME CASES

- **Harshad Mehta Securities Scam⁹**: The story of white-collar crimes in India started way back in 1988 and has been on a big rise since then. The Harshad Mehta’s case could be a perfect example to get the “pump-and-dump” scheme under “white-collar crimes”. He was known as the “Sultan of the Dalal Street”. Harshad Mehta basically manipulated the prices of the stock by unnatural pumping of cash in the stock exchange which would give a serious rise in the price of the share for his illegal gains and profits. The stock exchange had experienced a huge crash when this scam was exposed and the stock market faced a loss of “Rs. 0.1 million per day”. After this scam, only the SEBI had passed various guidelines related to the purchase and sale of securities in the market and to regulate and control the stock market.
- **Punjab National Bank Fraud¹⁰**: The accused (Nirav Modi) was a diamantine and an elite jewelry designer. It is said that Nirav Modi and some other corporate entities linked to him colluded with its officials to get Guarantees or Letter of Undertaking (LOU) to assist fund buyers credit from other overseas or international banks/ financial institutions. “*After making necessary investigation into the case, it was found that two officials of the bank*

⁸ Aayushi Swaroop, *White Collar Crimes In India*, IPleaders, (Jul.31, 2019), <https://blog.ipleaders.in/white-collar-crimes/>

⁹ Harshad s. Mehta & Ors. v. the state of Maharashtra, (1996) appeal (Crl.) 319-320 (06/09/2011) (India)

¹⁰ Punjab National Bank v. M/s Stellar Diamonds, (2018) OA no.119 (India)

had fraudulently issued LOUs to the said firms without following the due procedure. This Letter of Undertakings was then transferred across the SWIFT messaging system, relying on which the credit was offered to the said companies. PNB had already issued the stock exchange a report of the fraud and had gone through a \$1.8 billion fraud, one of the biggest corrupt acts of such kind to be detected in the Indian Banking Sector, to date.”

- **Saradha Chit Fund Case:** Major financial scam and alleged political scandal caused by the collapse of Ponzi scheme known as the Saradha Group financial Scandal run by the Saradha Group, a consortium of 200 private companies that were believed to be running collective investment schemes popularly and wrongly referred to as Chit Fund. *“This group collected around ₹200 to ₹300 billion from over 1.7 million depositors, promising a multiplied hefty sum in return in the form of cash or real estate and other assets. At least 10 Saradha group entities were alleged for committing fraud through public money-pooling activities. Amidst continuing public protest against the group’s alleged fraudulent activities, SEBI barred Saradha Realty India and its managing director Sudipta Sen from the securities market till it winds up all the Collective Investment Schemes (CIS) and makes the refund, as the same amounts to CIS Violation. The central government through the income tax department and Enforcement Directorate launched a multi-agency probe to investigate the Saradha Scam and similar Ponzi scheme. Later, in May 2014 Supreme Court of India, alleging possible international money laundering, severe regulatory failures an alleged political nexus, referred this case to CBI, India’s federal investigation agency”.*¹¹

CHAPTER 9: CONCLUSION

Most Indian Companies are functioning on old patterns and procedures, and are ill-prepared to fight the fraud and corruption and that’s why they have to be trained and concentrate on the fraudulent investigatory measures and appoint the fraud investigators or forensic investigators in their companies or as a part of the risk management teams. Huge investments are planned to

¹¹ Ayushi Pandit, *Top White Collar Crime Cases*, Lego Desk (Jan. 18, 2020) https://legodesk.com/legopedia/white-collar-crime-cases/#_ftn8

improve the infrastructure which goes unutilized appropriately since the greed of the people is never satisfied. The foreign direct investment flow has increased over the years as a result of liberalization and the sudden gush in the economy has also resulted in the individual's greed which ultimately leads to corruption. Several cases have been seen where "senior-level politicians" and "big business tycoons" who are given respect by the people had compromised their professional work ethics just for some money or we can say huge amounts of money and were involved in big scams. If we look at the statistics then Indian Companies which amount to about 78% have stated that they are "highly/moderately vulnerable to corruption". "White-Collar Crimes" have adverse negative effects on society at large and the country as a whole which ultimately destroys the economy and people's interest in investing and paying taxes. These are spread in various sectors such as "corporate industries", "educational sectors", "medical profession" etc. Certain laws are there and punishments in the "Indian Penal Code, 1860" and other legislations as discussed above to deal with these crimes and prevent them from occurring even then it is difficult to expose such crimes which are regarded as "white-collar crimes".