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White Collar Crime and India- Legal Insight

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White Collar Crime and India- Legal Insight

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Abstract

Acts of misconduct are punishable by law as long as there has been a civilized society. In this low-minded community, there was no penal code. The prevalence of misconduct grew in tandem with the public's ability to generate it. With the development of technology and invention, a new form of guilt known as cubicle breaches has arisen. Instead of the more commonplace physical breaches, which often involve brutality, the term "professional misconduct" is used to refer to misbehaviour committed by agents, business innovators, open authorities, and specialists through deception or blackmail. Professor Edwin H. Sutherland introduced the concept of cubicle crime to the study of criminology in 1939. The most common types of white-collar crimes are corruption and bribery; tainted food and medicine; tax evasion; profiteering and hoarding; tax evasion; human trafficking; digital wrongdoings; and so on. White-collar crime, a catch-all word for any illegal activity involving a breach of trust, is a major issue across all sectors of American society and a major contributor to the maintenance of street crime. However, a psychological study explains the social settings in which white-collar crime happens, making it possible to classify white-collar crime by crime description despite the difficulty this presents due to the proliferation of new types of white-collar crime. There are four types of white-collar crime: (1) individuals who conduct crimes by themselves, (2) employees who break their duties to their boss, (3) crimes that occur as a by-product of doing business, and (4) businesses whose primary activity is the white-collar crime itself. Considering the following about criminals' motivations is crucial, as understanding their reasons is necessary for reducing crime: Financial incentives based on an individual's estimation of their own level of poverty, a hindrance to success, In this article, we will look at the idea of victim advantage, the power of groups, and the mastering of useful skills. That others are engaging in the same behaviour creates a moral grey area, and a business activity that was legal yesterday may be illegal today. Light imprisonment reduces the deterrent value of discipline, but the mere trauma of an arrest may be enough to discourage a first-time offender from returning to illegal behaviour. The victim's own larcenous character is also invoked to justify the deception.

Keywords: *white-collar crime, economic crime, digital and cyber-crime, cyber law, public welfare offenses*

Introduction

In the terms "White Collar Crime" and also its derivative "organized crime," we see a fifty-year-old effort to reframe criminality. Professor Edwin Sutherland, one of the academics credited with popularising the term "white collar crime," differed with a number of the core principles of criminal law. No one is unaware of the existence of dishonest individuals in politics, the media, and other sectors of society. Some fields offer attractive opportunities for immoral or unlawful behaviour that rarely receives media notice. Many people acquire

dishonest habits because they were never taught to be honest by their families, schools, or other societal organizations. These radicals care little about being honest or following other accepted norms of behaviour. So they break the law without fear of punishment or worry for their image or social standing. The phrase "white-collar crime" is commonly used to refer to this type of offence. Furthermore, they are largely the end product of the cutthroat business climate of the middle of the 20th century.

The industrial revolution ushered in a period of plenty, but it also introduced a slew of new problems. As a by-product of industrialization, a previously unknown form of criminality has mushroomed into a serious problem. This new form of crime, unlike traditional offences, is typically committed by people from the top and middle classes while they are working in their chosen profession. The state's economy as a whole is in jeopardy. Because of their long histories and varied manifestations, classes are notoriously difficult to define precisely. They include a wide variety of criminal acts, such as smuggling, adulteration, tax avoidance, deception, and embezzlement. All of these unlawful activities share the common denominators of being driven by avarice and a desire for social or financial progress, and they all take place in the context of respectable commercial and industrial pursuits. These offences have damaged the social and fiscal fiber of the state and society, making it more difficult to anticipate future expansion. Crimes of this nature have been called many different things: "white collar crime" by Sutherland, "public welfare offences", "regulation offences" by some, "crimes of severe accountability" by others, and "socio-economic crimes also" by many others.

Five characteristics make up the meaning of white collar crimes given above.

1. It is illegal.
2. by a respectable individual;
3. with high social status;
4. typically a breach of confidence; and
5. in course of employment

White-collar crimes, in the words of the late Edwin Sutherland, are:

"A crime committed by a person of responsibility and high Social Status in the course of his occupation".

Characteristics of Common White-Collar Offenses

When it comes to white-collar crimes, deception is by far the most prevalent. To commit fraud, one must knowingly make a materially false statement or omit relevant information. Someone has to lose money as a consequence of relying on that deception. Common kinds of deception include:

- In the context of computers, "**computer theft**" refers to the illegal acquisition of financial, credit card, or secret business data.
- The **bankruptcy scam** includes unlawful debtor harassment, creditor deception, and asset hiding.
- Accepting bribes in the **health care industry**, or charging for services not rendered or needless tools or personnel. All sectors of the healthcare industry are vulnerable to this form of scam. This includes clinics, nursing homes, pharmacists, labs, mental institutions, emergency services, physicians' offices, and even patients' residences.
- **Telephone solicitation** (or "telemarketing") is a form of con where prospective victims are contacted primarily through the use of the telephone.

- Use of another person's credit card details to make illegal transactions is known as **credit card theft**.
- **Insurance theft** refers to the practise of making exaggerated or fictitious claims against an insurer.
- The use of the **postal system for fraudulent purposes**.
- Public housing, farming programs, military purchases, educational programs, and other governmental activities are all vulnerable to **government fraud**, which can take many forms, such as bribes in contracts, a collaboration between contractors, false invoicing, false verification of the standard of parts, and replacement of fake parts.
- commercial credit fraud, forged checks, phony movable instruments, mortgage fraud, verification, and fake applications are all examples of **financial fraud**. Ponzi schemes and theft from investment funds are examples of stock scams.
- False currency creation and the production of knockoff luxury goods are examples of **counterfeiting**.

In India, White Collar Offense

Due to the development of trade and technology, white collar crime has spread throughout the world. India is not immune to the pervasive problem of white-collar crime. White-collar crime has been given new depths by the rise of information technology in recent years, especially in the waning decades of the twentieth century. Cybercrimes, a novel category of white-collar offences with a strong computer component, have grown at an unparalleled rate. In the modern era, these offences have risen to international prominence and presented a formidable task for law enforcement. Due to the nature of these offences, the perpetrators need not be physically present at the time of the crime. Even more importantly, cybercriminals have a distinct advantage: they could use computer technology to cause harm without worrying about being discovered. As more websites appeared online, experts anticipated to see a corresponding rise in hacking. India's banking and financial organisations, electricity and telecommunications services, transit, businesses, sectors, etc. are all vulnerable to hacking.

Laws Related to White-Collar Crime

Hoarding for-profit and black marketing are two forms of white-collar crime that are pervasive in the Indian business and trading community. In order to make massive earnings, many businesses turn to break import/export statutes and foreign currency restrictions (i.e. FERA). Another frequent form of white-collar crime in India is the deliberate poisoning of the public through the adulteration of food, drinks, and medicines. Because of the complex nature of the processes and individuals involved, prosecuting white-collar crimes can be challenging. The Indian government has enacted numerous pieces of regulating legislation, the violation of which constitutes white-collar crime. This includes the Companies Act of 1956, the Foreign Currency Regulation Act of 1974, the Vital Commodities Act of 1955, the Economic (Development and Regulation) Act of 1951, the Import and Exports (Control) Act of 1947, and the Prevention of Money Laundering Act of 2002.

The Indian Criminal Code includes laws designed to prevent offences like bank and insurance scams, as well as those committed with credit cards and other similar schemes. In order to ensure that institutions in India comply with Know Your Customer regulations, the Reserve Bank of India has released stringent guidelines.

Banks and other financial organizations must keep customer transaction data for a minimum of ten years. The Information Technology Act of 2000 was passed to give legal weight to the verification of information shared in the course of business operations and combat computer-related offences.

The following violations are subject to the penalties outlined in Sections 43 and 44 of the IT Act:

- Data extraction that is not allowed is considered illegal.
- Invasion of privacy and illegal transfer of data
- To introduce malware or other harmful software
- Harm done to a machine or network.
- The act of preventing a legitimate user from entering a computer system.
- Contributing to the illegal use of a device in any way.

White-collar offences are the emphasis of the Information Technology Act rather than hacking per se.

Crimes Committed by Corporations That Fall Under the Category of "White Collar"

Only a small number of workers commit white-collar offences regularly. Business magnates and lawmakers play a disproportionately large part in white collar crime because their selfishness and avarice only increase as their wealth grows. When a big controversy breaks in India, the media immediately turns its attention to the political parties, and every time, investigations reveal their illegal participation. Since businesspeople are engaged, the number of white-collar offences committed by them is untallyable. They have earned this label due to their frequent participation in illegal activities such as trade restrictions, discriminatory labour practises, the sale of tainted food and medication, bribery of public officials, and other similar schemes. They commit numerous offences while hiding behind the company's facade of legitimacy. One notable example is the Satyam scandal, in which a single person was able to swindle millions of dollars while hiding behind a company.

Medical Center White Collar Crime

White-collar crime in India is so pervasive that it goes beyond the bounds of the law. It's not uncommon to hear about similar misfortunes involving people in other fields, such as medicine, engineering, teaching, business, politics, and so on. It is common to find doctors and other medical professionals complicit in a wide range of unethical practises, including the provision of fraudulent certificates, the performance of illegal abortions, the distribution of free samples of prescription drugs, and even the dispensing of substandard or adulterated versions of these drugs. Regardless of how skilled a practitioner is, they will frequently use clothing to delay treatment in order to charge exorbitant fees. Numerous scandalous examples have surfaced in which doctors and other health care providers exhibited the most extreme forms of cruelty in the name of greed. One of the most common forms of misconduct in the medical field is the dissemination of dishonest and fictitious advertising materials that guarantee a complete recovery. The problem lies in the undeniable truth that, they frequently avoid punishment because they cannot be presumed to have violated the word of the law. However, by acting contrary to the law's spirit, they perpetrate offences that are antisocial and cause enormous damage to public health and safety.

The Problem of White-Collar Fraud in Education

The association is open to educational organisations that commit white-collar offences. The commercial organisations that care less about educating children and more about making a profit at the expense of their future play a particularly nasty role in this scenario. The standard of education in India is being undermined by rackets that exist in some schools and colleges and help students get into exams by forging their qualifying documents. Academics and government employees often engage in unethical behaviour when dealing with the government because they cannot hope to become wealthy off of the meager salaries they receive. It is

common practise for professors to threaten a student's career prospects if he or she denies having private tutoring.

Offences Committed by Lawyers That Constitute White Collar Crime

With the rise of the modern industrial economy, white-collar criminality emerged as a new phenomenon. As an increasing business connection emerged over time between insurance, finance, equities, and associated company issues, so did the modern industrial free enterprise. This led to increasingly complex legal issues involving property rights and other areas of law, which in turn cleared the way for a new class of champions to emerge, who, in the name of providing justice, began aiding in the wrong and pursuing their own narrow interests. Over time, a large number of lawyers emerged, many of whom abandoned their original commitment to public service in favour of helping already prosperous business owners take advantage of every legal advantage they could discover. They did a tonne of research to figure out the best methods of concealment for themselves and the other rich business tycoons. These lawyers conduct white-collar offences by actively seeking out illegal means of avoiding paying taxes. Unscrupulous and unethical behaviour, such as the fabrication of fake evidence or the use of expert witnesses in violation of the ethics of the legal field or the use of stalling tactics in concert with judicial personnel, occurs all too often. Lawyers in Indian society have been perpetrating white-collar crimes, and the involvement of magistrates and justices in these crimes is a source of humiliation. Under the guise of deciphering the laws, they often serve as a cover for thugs of any political stripe, allowing them to roam free when they should be held accountable. The fact that the perpetrators of these offences are the very people entrusted by the state to uphold justice makes this situation the most regrettable and, at the same time, the most disastrous possible outcome.

Legislation Concerning Varieties of White-Collar Crimes

Corruption: The pervasiveness of graft is one of the problems that has plagued our nation for decades. It's safe to say that misconduct covers a wide range of topics. What this term refers to are all the things that are forbidden by legislation and social norms. It touches on nearly every facet of community life and has a very broad range of applicability. There isn't a particular domain where the wrongdoing doesn't exist. It has permeated and become embedded in every aspect of contemporary life. There should be one corruptor for every instance of misconduct.

"Corruption implies moral obliquity or moral perversity," writes Stroud.

Multiple scandals, including the 2G frequency telecommunication scam, the Commonwealth games scam, and the Adarsh housing society scam, have shaken the state to its foundations. White-collar crimes done by respectable people like businesspeople, manufacturers, vendors, wholesalers, and dishonest public officials were vividly depicted in the Santhanam committee report's conclusions. The Prevention of Corruption Act of 1988 struck down Articles 161 through 165-A of the Indian Penal Code, 1860.

Crimes committed by public servants in violation of the Indian Penal Code of 1860

A Governmental Officer Who Takes Part in Unauthorized Business Activity: Because of the trust placed in them, local officials are sometimes given permission to participate without giving their complete attention to their formal duties. They may also use their formal status to advocate for irrational interests over competing industries. For this reason, the Indian Criminal Code states in section 168, "Whoever being a public servant and being lawfully obligated as such public servant not to conduct business, acts in trade, shall be penalised with the ordinary incarceration for a period which may stretch to one year or with fine or with both."

To Quote Section 169: "Whoever, being a public servant and being legally obligated as such public servant, not to purchase or bid for certain property, purchase or bids for that estate either

in his own name or in the name of another, or collectively, or in shares with others, shall be penalised with simple incarceration for a period which may extend to two years, or with fine or with both and the property, if purchasable, shall be forfeited."

Crimes against a public official under the Prevention of corruption Act of 1988:

If a public worker accepts anything other than lawful compensation for their work, they will be subject to a fine and a jail sentence of at least six months and up to five years under Section 7. Accepting a bribe to sway a public official is a felony penalised by a minimum of six months in jail and a maximum of five years in prison, as stated in Section 8 of the Code of Criminal Procedure. Accepting any form of compensation in exchange for using one's position in government to advance one's own interests is a felony punishable by a fine and/or incarceration for a period of not less than six months and up to five years (Section 9).

Abetment by a public worker of the offences described in Section 8 is penalised by incarceration for a period which shall not be less than six months, but which may stretch to five years, and shall also be subject to fine, as detailed in Section 10. If a public servant receives something of value from someone who has some stake in a case or business that the public servant is conducting, without providing anything of value in return, the public servant will be subject to a fine and possible jail time under Section 11.

Abetment of crimes as described in Sections 7 or 11 is punishable by incarceration for a period of not less than six months but which may stretch to five years, in addition to fines. If a public worker commits a crime, they will be subject to a punishment and a jail sentence of at least one year and up to seven years (according to Article 13).

According to the Law Lexicon, **bribery** is the practise of giving money or other valuables to a public officer in order to persuade that person to act in a certain way. Bribery is used to sway or coerce an authority into doing something. Each participant in a bribery scheme runs the risk of criminal prosecution. For instance, in a highly recognised boxing match, the manager of one fighter may offer the opponent a monetary incentive to abandon the bout. Both people may face extortion charges, despite the fact that the situation includes an athletic event rather than government employees. Bribery can be considered illegal even if it doesn't directly hurt anyone.

The Indian Penal Code, Section 171-B states:

- Whoever. gives a gratification to any person with the intent to induce him or any other person to exercise any electoral right or to reward any person for having exercised any such right or ii. accepts, for himself or for any other person, any gratification as a reward for exercising any such entitlement or for inducing or simply trying to induce any other person to exercise any such right, commits the offence. Except that nothing in this subsection constitutes a crime if it is a statement of public policy or a pledge to take public action.
- A person is considered to have given a satisfaction if they offer or consent to give, or if they present or try to acquire, a gratification.
- One is considered to have accepted satisfaction if they receive, consent to take, or try to obtain said reward. Likewise, one is considered to have taken a satisfaction as a prize if he or she uses it to motivate them to act in a way they had not planned to or as compensation for work they had not completed.

Giving or accepting a compensation, as an incentive or prize, to any person to persuade him to stand or not appear as a contestant, to retire from the race, or to vote or not vote at an election is considered **bribery under Section 171-B of the Indian Penal Code, 1860**. As stated in Section 7 of the Act for the Prevention of Corruption, 1988, gratification is not limited to monetary gratification or gratification that can be estimated in money, and it includes offers and agreements to grant or make and try to obtain gratification.

The practise of money laundering

There is a close connection between organized criminal activity and illegal tax evasion. Tax avoidance is the process by which a large sum of illegally obtained money (from drug selling, the psychological aggressor movement, or other real crimes) is given the appearance of having come from a legal source. In any event, it is converting illegal funds into legal money. This takes one back to the original task of cleansing the enormous bank vaults. When done correctly, it allows criminals to maintain control over their earnings and, at long last, provide a genuine veneer of legitimacy to their source of income. "Whoever directly or indirectly seeks to benefit from, actively aids, is a party to, or is involved in any cycle or action connected with returns of misconduct and expanding it as the pure property will be guilty of the charge of unlawful tax evasion." The national economic and government stability is negatively impacted by money trafficking.

Dealing on the Inside

Officials, executives, and advantageous owners of more than 10% of a subclass of a company's value protections are all considered insiders. Trading business stock while in possession of material, non-public information is considered dishonest because it breaches the moral obligation executives owe to investors. A breach of moral obligation to shareholders occurs when an insider acquires or sells information that is available only to the business. In the context of unlawful insider trading, "bigwigs" can refer to anyone who trades shares based on material non-public information in violation of a duty of trust, not just company officials and major shareholders. This obligation may be acknowledged in cases where an employee "guides" an associate to private information that might have a substantial impact on the company. The business advisor's obligation to the company is released if he or she places a deal based just on the partner's assessment of the company's offer. Insider dealing has been extremely volatile recently. When insiders are acquired while profiting from private information via insider trading, managerial adequacy is regularly managed. New instances of insider misuse under stringent insider switching laws echo the combined add support in the petition, suggesting that this practice needs to be controlled with a heavy hand.

Fake Currency

Enormous scope movement of fake currency can undermine the economy, just as public safety of any nation. The problem has long existed in India, but thanks to technological advancements, high-quality phony money that had been stolen by terror-based tyrants from abroad has been recovered.

Most counterfeit currency produced overseas is smuggled into India via Nepal and Dubai.

Other than great fake money notes being smuggled into the country via the international line, groups of thugs and individuals inside the nation and reworking usage of Computers and complicated printers in making counterfeit cash notes.

Since the problem has national and global implications, the Bank, CBI, and State Security Services should manage it properly.

Fake Stamps Scheme

Abdul Karim Telgi operated a multi-center counterfeit stamps scam across the nation, attracting the attention of the police, the security press, and the heads of major banks and insurance companies. This exposed a flaw in the system. It is estimated that this gang has cost the government a total of Rs. 25,000 in lost revenue. There are a lot of diverse groups working in different parts of the nation, so the problem must be handled in a manner that's both active and thorough.

The Following Are The Leading Cases: -

In **M.H. Hoskot VS State of Bombay**¹, condemning the circuit court for the incorrect sentencing, the supreme court observed:

“Social protection is the criminological basis of discipline. The court which overlooks the grievous harm to society implied in economic offences by the topmost ‘mafia’ poorly social rights. Mild punishment justice is flagrant unfairness where so many innocent people are the prospective victims”.

The Supreme Court showed its policy regarding the penalty of white-collar crime in the context of corruption by public worker in **Som Prakash VS State of Delhi**². Extreme discipline must be prescribed to weed out such societal peril. It was claimed that though all-intensive attempts to hunt down larger offenders were required; judges could not slow down even though bigger criminals were to be captured.

The Supreme Court has, on multiple occasions, ruled that the criminal laws pertaining to social welfare legislation must be interpreted liberally to ensure that the legislative goal is not thwarted, even though it has prescribed harsher penalties for white-collar offences.

Lastly, judges in India have given stringent meaning to the socio-economic laws which do not require any mens rea in the form of purpose or awareness for perpetrating a crime.

In **P.K. Tejani VS M.R. Dange**³, a case under the prevention of food adulteration act, the supreme court said: it is common law that in food crimes stringent responsibility is the norm not solely under the Indian act but all the world over.

Clause 7 imposes an unequivocal duty independent of scanner, ill conduct, and mens rea. If you have sold any article of food contradictory to any sub-sections of section 7, you are culpable. No longer can this matter be debated.

Conclusion

A new type of crime, white-collar crime, has emerged in recent decades, and this can be directly attributed to scientific and technological progress. White-collar crime is not specified anywhere in the statutes. However, white-collar crime encompasses such a broad range of activities that it is possible, after examining the provisions of the Indian Criminal Code 1860, to draw connections between offences like bribes, corruption, food adulteration, fraud, etc., and these other white-collar crimes. White-collar crime clauses in the Indian Criminal Code should be updated to reflect the current social climate and deter future offences. The issue of white-collar crime can be managed through a consistent application of the sections of the Indian Criminal Code and the specific Statutes dealing with such offences.

India's development narrative will only continue if deception and misconduct in the public and commercial sectors are reduced.

Multinational corporations are hesitant to engage in the country because of the prevalence of dishonesty and deception. Indicators of the negative effects of fraud and corruption include the 2011 decline in FDI and the exit of funds from stock markets by international financial organisations. That's why the government of India needs to step up its game in terms of administration and crack down hard on lawbreakers. With the CAG pointing the way forward, it's time for political groups to muster the will to clear up the wreckage. In order to decrease fraud, the private sector must adopt fraud protection methods and place a premium on integrity. To reduce the potential for deception in India, both industries must work together.

¹ (1978) 3 SCC 544

² (1974) 4 SCC 84

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