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White-Collar Crimes and the Crisis of Democratic Institutions in India: A Reform-Oriented Legal Study

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White-Collar Crimes and the Crisis of Democratic Institutions in India: A Reform-Oriented Legal Study

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Introduction

Globalization has become a major socioeconomic phenomenon in the last few decades. Trade, mobility, instantaneous communication, and technical advancements all played a role in this development. There is a wide range of crimes that fall under the heading "White Collar Crimes," including drug trafficking, guns and explosives trafficking, fraudulent financial transactions, and foreign exchange manipulations. There are many different types of economic offences, which include those committed either alone or as part of an organised gang in order to gain money through unlawful means, as well as those committed by individuals who are either alone or with others in order to gain money through illegal means. These offences are exactly the same as the typical criminal offences, so there is no difference between them and the criminal code. In order to place these offences in a category of their own, it is essential to recognise that they differ from one another in the means by which they are carried out and that they are committed dishonestly by taking advantage of loopholes in laws, rules, and regulations. While such operations are meticulously planned and executed with impunity, they are only brought to light when the repercussions of their actions emerge, resulting in post facto legal action by enforcement authorities¹. An adequate counter plan is required to cope with the above-mentioned operations carried out by organised crime groups in various ways. It is a significant development in the country and around the world to put powers to confiscate assets acquired via illegal means under legal jurisdiction. Some extra procedures must be added to traditional legislation to cope with the confiscation of assets obtained through criminal activity. Throughout the years, institutional support has been built to focus enforcement efforts by creating specialised units solely dedicated to dealing with these types of economic offences. There is no way to repair the damage that economic crimes have done to the country, and the effects may be felt all the way down to the average citizen, hampering the country's growth and development..

¹ Braithwaite, John. "White Collar Crime." *Annual Review of Sociology*, vol. 11, 1985, pp. 1–25. *JSTOR*, <http://www.jstor.org/stable/2083283>. Accessed 21 Mar. 2023.

Illustratively, some of the key repercussions that may be brought on by the economic infractions are as follows:

- An increase in the pressure caused by inflation,
- Aberrations in the progress of developmental activities,
- The unequal distribution of resources, which contributes to the formation of elitism;
- A reduction in the scope of the tax base,
- The production of an extremely large sum of illicit funds,
- The establishment of a separate economic system,
- Efforts and works related to development are being hampered,
- The economic stability of the nation is under jeopardy,
- The fertile basis for corruption in its many different manifestations and on many different levels,
- Corruption in public office and illegal business develop, which has a negative impact on legitimate commercial activity,
- The resources of monetary institutions and commercial institutions are misappropriated, manipulated, and exploited for the purpose of achieving personal benefit;
- Brings down the spirit and dedication of the people in the community, and
- The poorest and most vulnerable people are become even poorer and are in danger

The Legal Basis of White-Collar Crimes and their Classification

The majority of laws underlying white-collar crime differ from conventional criminal laws in five ways:

- a) in origin,
- b) indetermination of responsibility, or intent,
- c) in philosophy,
- d) in enforcement and trial procedure, and
- e) in sanctions used to punish violators.

To begin, the majority of white-collar laws have been enacted through legislative action as of a specific date, and some of these regulations run counter to the principles that are established by common law. In contrast to the majority of the traditional criminal code, which is seen as nothing more than a legislative expression of "natural" crimes, known as *mala in se*, these are considered to be *mala prohibita*, or crimes that have been specifically created by legislative authorities. Second, in contrast to the implicitly more serious felonies that are defined under penal law, the vast majority of regulatory regulations consider infractions to be in the lesser category of misdemeanours. In addition, the question of purpose, which plays such a central role in the criminal code, is irrelevant to the process of conviction under many regulatory rules, despite the

fact that intentional violations, if proven, often result in increased punishments. In many regards, white-collar offences are legally much more comparable to traffic regulations and municipal ordinances than they are to statutes from the criminal code². Procedures that are different from those that are more typically utilised in traditional criminal cases highlight the fact that white-collar law is legally unique from other types of legislation even more clearly. The vast majority of federal regulatory law, as well as a significant portion of its counterpart at the state level, places the responsibility for its implementation not on the police and public prosecutors, but rather on specially-created investigative and enforcement authorities. The Bureau of Internal Revenue is probably the most well-known of these, although there are numerous additional agencies that are functionally equivalent operating within the framework of other pieces of legislation. In the ultimate analysis, it is possible to utilise the police and the criminal court; but, in general, the enforcement of such laws is not a typical police activity. In the context of white-collar crime legislation, the same agency or commission that supervises investigations also holds hearings on cases and is responsible for the administration of a variety of punishments or sanctions that do not include jail time or other traditional forms of penal punishment. Due to the fact that these hearings are not trials in the traditional sense, the formal criminal procedures and the numerous protections afforded to defendants during the course of criminal proceedings are frequently not followed. The findings of such hearings may, of course, be appealed to traditional courts, in which case the exact, if more tedious, formal procedural standards would apply to the appeal process. This administrative process of inquiry and hearing is more nearly analogous to the procedures that are followed in juvenile court than those that are followed in the court that deals with criminal cases. Because the laws that prohibit mala prohibita are intended to be remedial in character, their interpretation is liberalised such that the purpose of the laws continues to be the prevention or correction of existing illegalities rather than the repression or punishment of those who violate them. In this regard, the authorities that enforce the law make use of a wide variety of sanctions in addition to the traditional criminal punishments of incarceration, probation, and fines. Warnings, injunctions, consent decrees, seizure and destruction of products, civil suits for damages, including the treble-damage suits sanctioned in the case of OPA violations during the wartime emergency, licence revocation, where applicable, and similar informal or civil processes may be administered to violators of such laws. However, the legislation also allows for the application of traditional sanctions by the criminal courts in situations where such a course of action is warranted. Another one of the functions of the agency in charge of executing the law is to decide whether or not to pursue criminal

² Hagan, John, and Patricia Parker. "White-Collar Crime and Punishment: The Class Structure and Legal Sanctioning of Securities Violations." *American Sociological Review*, vol. 50, no. 3, 1985, pp. 302–16. *JSTOR*, <https://doi.org/10.2307/2095541>. Accessed 6 Jul. 2022.

charges rather than civil action. According to Sutherland's review of the corporate archives of seventy large companies, there were a total of 980 unfavourable decisions rendered against these businesses. Of these, 158 were the result of criminal proceedings, 298 were rendered by civil courts, and 129 were rendered by equity courts. The remaining decisions were administrative actions, which were discussed above³.

Classification:

Edelhertz, who is known for being a legalist in the most positive meaning of a term that is becoming increasingly pejorative, is said to propose a four-category classificatory system of economic crime, which is the term he prefers to use rather than white-collar crime. These classifications are as follows:

1. Crimes committed by individuals acting on an individual or ad hoc basis
2. Crimes committed in the course of their occupations by those operating inside businesses, governments, or other establishments in violation of their duty or loyalty and fidelity to employer or client (including computer frauds, commercial bribery, kickbacks, "sweetheart" contracts, embezzlement, expense-account padding, and conflicts of interest).
3. Crimes that are committed in furtherance of and in conjunction with the activities of a business, but that are not the business's primary focus
Scams and schemes relating to white-collar crime (bankruptcy), land and house improvement (merchandising), insurance (pyramid schemes), and securities (stock and bond frauds) are all examples.

Difference Between White Collar Crimes and State Corporate Crimes

Because agreements between a state and a business will be negotiated at a reasonably senior level on both sides, this is virtually exclusively a white-collar "situation" that provides possibility for global organised crime and complicated, undiscovered agreements between worldwide private parties and national jurisdictions: "incorporated governance" within public-private partnerships like the largest in history, Gasunie of 1963, where Exxon Mobil compelled the government to allow it to negotiate with it⁴.

Difference Between White Collar Crime and Economic Crime

³ Kwan, Quon Y., et al. "The Role of Criminalistics in White-Collar Crimes." *The Journal of Criminal Law, Criminology, and Police Science*, vol. 62, no. 3, 1971, pp. 437–49. *JSTOR*, <https://doi.org/10.2307/1142190>. Accessed 6 Jul. 2022.

⁴ Blum-West, Steve, and Timothy J. Carter. "Bringing White-Collar Crime Back In: An Examination of Crimes and Torts." *Social Problems*, vol. 30, no. 5, 1983, pp. 545–54. *JSTOR*, <https://doi.org/10.2307/800271>. Accessed 6 Jul. 2022.

1. More often than not, the words "Economic Crime" and "White Collar Crimes" are used interchangeably. In truth, both phrases are necessary to distinguish between various types of criminal activity. Instead of the competent but dishonest criminals who commit white-collar crimes like embezzlement of public or government funds, economic crimes involve large amounts of public or government money and are therefore more difficult to categorise.
2. White-collar crimes, often known as socio-economic crimes, are strikingly unlike from typical or traditional types of crime in a number of important areas.
3. These crimes are done by people with a higher social position than traditional criminals, such as doctors, lawyers, chartered accountants, government employees, and those who fix technical items (such as televisions, radios, refrigerators, etc.)
4. Two of the most common ways in which these crimes are done are through fraud and deceit as well as other methods such as misappropriation and misrepresentation.
5. There are no feelings or sentiments involved in the perpetration of these acts.
6. When socioeconomic crimes are committed, people tend to tolerate them because they partake in them and identify with the perpetrators.
7. If you're in the upper echelons of the corporate world, you're likely to be guilty of white collar crime. However, it currently encompasses a wide range of occupationally related offences committed by anyone.
8. When a crime against society or the economy is committed, it affects the entire community, society, or even the entire country⁵.
9. Traditional crimes have a negative connotation associated with them, such as shame and immorality, whereas these crimes have no such connotation.
10. In order to defend and preserve the "overall health and economic system of the entire society against exploitation and waste," certain offences fall into a separate category.

Difference Between White Collar Crime & Organised Crime

1. In organised crime, there is a large number of people who commit crimes for a lengthy period of time, often for an unlimited period of time.
2. It tends to dominate law enforcement institutions through political clout or corruption.
3. There is a significant degree of centralization in the organisation, with power concentrated in the hands of a small number of individuals.
4. There have been comparisons made between the American mafia and large enterprises. Delegation and specialisation have been implemented in order to reduce the burden on the workforce. Organized crime, like any modern

⁵ Lochner, Lance. "Education, Work, and Crime: A Human Capital Approach." *International Economic Review*, vol. 45, no. 3, 2004, pp. 811–43. *JSTOR*, <http://www.jstor.org/stable/3663638>. Accessed 6 Jul. 2022.

corporation, requires rigorous planning, risk insurance, and a tendency to expand and monopolise.

5. The criminal organisations take precautions to ensure the safety of the group and to prevent their activities from being disrupted. As a result, preparations are made with medical professionals such as doctors and lawyers as well as police officers and judges as well as politicians and other government officials.

Cases on white Collar Crime

1. Harshad Mehta Securities Fraud⁶ (1988-1995)

Grow More Research & Asset Management Limited was the name of the brokerage company that Harshad Mehta, a former stockbroker, established in 1990. Investors did not question their decisions when they followed in Mehta's footsteps because of his well-known status in the stock market and his reputation as the "Sultan of Dalal Street." He then created a fictitious market by purchasing the scrips at inflated values, having first obtained a large loan from the bank to cover the cost of the transaction. He took advantage of his position and used it to his advantage by manipulating the stock values of various scrips. As a direct consequence of this, anomalous amounts of money were injected into the stock markets, which led to an abnormal increase in the price of these shares. Even though Harshad Mehta's behavior was unethical, the law did not punish him for it. The situation became problematic after Mehta fraudulently acquired financial resources from the bank in order to make investments in the stock market. Laundering the stolen funds would be an appropriate term for this type of financial misdeed. He made approximately 5000 rupees worth of money.[3] This scheme was uncovered by the well-known researcher Sucheta Dalal at the time. This persistent level of selling resulted in a daily loss of 0.1 million yen for the market. The Indian stock market had just experienced its worst collapse in its entire history as a result of this event. The rules and regulations governing SEBI have undergone a number of revisions in response to the proliferation of such transactions.

2. Satyam Scandal: biggest-ever corporate accounting fraud

This fraudulent scheme was exposed on January 7, 2009, when a letter of confession penned by B. Ramalingam Raju, founder and chairperson of Satyam Computers Services Limited, and published in Times of India brought it to the public's attention. In the letter, he admitted that he had tampered with his books of account by exaggerating the value of his assets and underestimating his obligations.

The financial health of the business can be gleaned from a close examination of its books of accounts. Before putting their money into the market, investors can put their trust in them and use them as a valuable instrument. In order to defraud

⁶ 1992 (24) DRJ 392

shareholders and investors, the accounting records were tampered with. The overall fraud resulted in losses of approximately 14,000 billion rupees and is widely regarded as a significant contributor to the global economic downturn that began in 2009.

Within the context of this scandal, the SEBI responded aggressively by finding Ramalinga Raju and nine of his significant colleagues guilty of engaging in insider trading as well as fraudulent and unfair business practices. The accused have been ordered by SEBI to make a payment of approximately 3,000 crores within the next 45 days, and they have also been banned from accessing the security markets in any capacity for the next 14 years. The SEBI was able to respond forcefully, ensuring that a fraud of this nature will never occur again.

Codification of White Collar, Social and Economic Crimes

All 310 legislation dealing with social and economic offences should be codified in order to remove the ambiguity that now exists in the law, as well as to provide uniformity in the law, procedure, and application.

These types of crimes should be classified scientifically as "White Collar and Socio Economic Offenses," so that criminals can be dealt with harshly without jeopardising the national interest, the interests of the accused, or the interests of the public at large. Anti-social offences are the subject of approximately a hundred Central Acts, as well as a number of State enactments⁷. There is no uniformity in punishment and the rules are too convoluted to understand. Crimes that are punishable by the country's general criminal law can be divided into two categories: traditional crimes against people and property and crimes against the state, for example. To begin with, there are a variety of offences that fall outside of the purview of the country's basic criminal code, but can be prosecuted under special regulations adopted by Congress from time to time. The second group of offences may be codified as "White Collar and Socio-economic Crimes" punishable by a Central Act. The study committee on labour law's proposal for a standard labour code could serve as a guide for the pattern of codification. Because the Penal Code's framework would remain intact, and the codification would reflect society's evolving demands, it would have an advantage over the recommendation of the 'commission on Prevention of Corruption(1964)' to include such offences under its jurisdiction⁸.

⁷ Shapiro, Susan P. "Collaring the Crime, Not the Criminal: Reconsidering the Concept of White-Collar Crime." *American Sociological Review*, vol. 55, no. 3, 1990, pp. 346–65. *JSTOR*, <https://doi.org/10.2307/2095761>. Accessed 6 Jul. 2022.

⁸ Kramer, Ronald C., and Raymond J. Michalowski. "WAR, AGGRESSION AND STATE CRIME: A Criminological Analysis of the Invasion and Occupation of Iraq." *The British Journal of Criminology*, vol. 45, no. 4, 2005, pp. 446–69. *JSTOR*, <http://www.jstor.org/stable/23639249>. Accessed 6 Jul. 2022.

Nature of Punishment

In addition to being reformatory, punishment should serve as a message to others and a deterrence to those who might commit similar crimes in the future. Because of this, the law should not be lax when it comes to imposing penalty on white collar or socioeconomic criminals. If the law provides safe haven or demonstrates leniency toward such offenders, it will fail in its mission and duty. Hundreds of people perished in Varanasi, India, last week after drinking toxic country-made booze. Indian Excise Act penalises such an infraction only informally. There are numerous examples of this. Dr. Radhakrishnan, the Second President of India, might be acceptable to quote in this context. According to him, "the deadliest adversaries of our society are the practitioners of this wickedness, the hoards and profiteers, the black marketers and the speculations. They must be dealt with firmly, however.

whatever their position, importance or influence; if we allow wrongdoing to continue, people will lose trust in us." For white collar, social, and economic criminals the sentence should be more severe and decided by the severity of the offence and social harm inflicted. Consequently With collar and social and economic criminals should be subjected to the same harsh punishments as traditional and conventional offenders under the Indian Penal Code. For example, in the event of food, drink, and drug tampering, or other offences that harm the state's economy, such as smuggling, tax evasion, hoarding, black-market trading, etc. Penalties for crimes of this gravity must be severe enough to serve as a deterrent to future criminal activity. If the situation warrants it, the punishment could be increased to include the death penalty or life in prison.

Modification of the Doctrine of Mens Rea

An old common law theory, which has been around for more than a century, should be abolished in order to preserve and safeguard the community's social and economic interests, which necessitate strict respect to such rules. Socio-economic crimes should be subject to strict criminal culpability⁹. To put it another way, whether or not a person intentionally violated a law and caused a damage, he should be held accountable for that wrongdoing.

Burden of Proof

In situations involving white-collar, social, and economic crimes, the burden of proof should be shifted from the prosecution to the accused under a revision to the law of evidence. Unless the defendant can demonstrate his innocence, he or she should be held criminally responsible for any infractions of these statutes.

⁹ Parker, Jeffrey S. "The Economics of Mens Rea." *Virginia Law Review*, vol. 79, no. 4, 1993, pp. 741–811. JSTOR, <https://doi.org/10.2307/1073469>. Accessed 6 Jul. 2022.

Tacking the white-Collar Crime

It's critical to remember that while scams cannot be completely thwarted, the chances of them happening are greatly decreased. There is a growing interest among banks and financial institutions in applying investigative techniques used in fraud investigations to prevent and detect corporate fraud before it has a negative impact. The strongest fraud risk management system can help a company reduce fraud, but its greatest asset — its people — can also be its greatest liability¹⁰. A company may use one or more fraud-detection approaches, but to reap the benefits of these systems, they must be implemented in whole, from beginning to end. Preventing fraud is always preferable to treating it once it has occurred, as the old adage goes. An increase in white-collar crimes is almost inevitable when the population is plagued by widespread malnutrition, mass illiteracy, and general ignorance. Criminal justice officials in our country face a major challenge when it comes to preventing these crimes.

However, the following are some remedial steps to address white-collar crime:-

1. Raising awareness of these atrocities through the press, public platforms and other audiovisual tools is one way to do this. White collar crime may be significantly reduced with the implementation of programmes that focus on increasing students' knowledge of the law.
2. White collar criminals should be subject to special courts that have the authority to impose prison terms of up to ten years.
3. These crimes may be reduced if strict regulations and harsh penalties for white collar criminals are implemented. Even laws with a backwards-looking effect can be justified in this way. One of India's former presidents once said that "the practitioner of this evil (ie. white collar and socio-economic crimes), the hoarders, the profiteers, the black marketers, and speculators are the deadliest enemies of our country. People will lose faith in us if we allow misconduct to go unchallenged, no matter how high-ranking, powerful, and influential they are."
4. White collar and socio-economic crimes should be given its own chapter in the Indian Penal Code, so that those found guilty of white collar crimes, regardless of their social level, are not exempt from punishment.
5. White collar criminals should be dealt with harshly by imposing harsher penalties in light of the seriousness of the harm they inflict on society. In this respect, the Supreme Court noted in *M.H. Haskot v. State of Maharashtra*: "Soft sentencing justice is terrible injustice where many innocents are the potential victims." in this case.

¹⁰ Braithwaite, John. "Restorative Justice: Assessing Optimistic and Pessimistic Accounts." *Crime and Justice*, vol. 25, 1999, pp. 1–127. *JSTOR*, <http://www.jstor.org/stable/1147608>. Accessed 6 Jul. 2022.

Conclusion

Because of the pervasive corruption in our offices and in every aspect of life, it is unlikely that these white-collar criminal activities will be eliminated anytime soon. This is the case unless each of our laws is properly enforced in their letter and spirit by the law enforcement agencies and officials concerned with full honesty and integrity. Only then will these activities be eradicated. Despite the fact that the anti-corruption statute and I have discussed it in detail in the previous chapter of my thesis. It is this law that has to have a greater portion of its correct implementation, particularly against those who are Sheldon prosecuted, and they should be punished to the fullest extent possible. To the same extent, each of the laws that we have analysed in the preceding chapters need to have their appropriate enforcement carried out by all of those who are in charge of the matters at hand. Whether it is the Food Adulteration commodities Act, the Essential Commodities Act, the Prevention of Corruption Act, or any of the other laws regarding tax evasion, etc. With this goal in mind, criminal activity can be divided into two distinct categories, viz.

1. All crimes against persons, property, or the state that are punished by the general criminal law of the land, known as the Indian Penal Code of 1860, are considered connectional and conventional crimes.
2. Crimes against the WCC and society and the economy that are not typically penalised under the ordinary criminal law of the state but are punishable under The various pieces of regulatory legislation that have been passed by the legislature at various points in time.

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