

# Legal Aspects of White-Collar Crimes

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**Abstract:** *Right from the very beginning of the civilizations, there has been existence of power in few hands. There have always been people who either because of the position or the knowledge they hold have dominated the public in general. Although this can't be said for each one of them, but still the fact remains at large that when the exercise of power is done without responsibility the result is crime. And when this exercise of power is done for gaining financial gains it gives rise to white-collar crimes. Right from the times immemorial there has always been allocation of power to few for the general administration of the society. This allocation of power is due to either the position they hold or the knowledge they possess. This gives them an upper position in the social structure. During kingdoms the court men or the kin of the king held this position. They had powers vested to them in the position they held, which also had attached responsibility of doing the tasks they were allotted with utmost sincerity and honesty. And it can be said that to a large extent except a few there was no deviation from this.*

**Keywords:** White-Collar Crimes

## I. INTRODUCTION

Right from the very beginning of the civilizations, there has been existence of power in few hands. There have always been people who either because of the position or the knowledge they hold have dominated the public in general. Although this can't be said for each one of them, but still the fact remains at large that when the exercise of power is done without responsibility the result is crime. And when this exercise of power is done for gaining financial gains it gives rise to white-collar crimes. Right from the times immemorial there has always been allocation of power to few for the general administration of the society. This allocation of power is due to either the position they hold or the knowledge they possess. This gives them an upper position in the social structure. During kingdoms the court men or the kin of the king held this position. They had powers vested to them in the position they held, which also had attached responsibility of doing the tasks they were allotted with utmost sincerity and honesty. And it can be said that to a large extent except a few there was no deviation from this.

But societies progressed and with this the demands and the needs also increased. There burden on resources increased and with advent of industrialization the gap between the needs and satisfaction also increased. There emerged a new class division in the society the upper strata, middle strata and the lower strata. The upper strata consists of the rich businessmen, politicians, bureaucrats and professionals like advocates, doctors, accountants etc. This upper class holds a place of advantage in the society over and above the rest. They possess a degree of power which they exercise over the general public.

With the advent of industrialization there was an increase in the financial crimes. These crimes were mostly committed by the people of upper strata which consisted of businessmen and politicians and bureaucrats. It was then in the year 1930 that criminologist Edwin Sutherland brought into the notice of the world the very concept of white-collar crimes. Although he didn't define the term white-collar crime but it was him who opened the eyes of the world to then a very young but potential giant evil of the white-collar crime. Hence he is rightly tagged as —the father of white-collar crime. He at that time brought into the notice of the world that how the businessmen using immoral means gained financial gains which had a great impact on the unaware society. Till then there was ignorance of such acts as the impact on the victims was hidden and indirect. The major characteristic of the white-collar crime is that the victim is unaware of the loss and the impact of the crime done against him. This very nature of the crime makes it even more dangerous and difficult to control.

### Definition

The contribution of Edwin Sutherland towards white-collar crime is tremendous. He argued that:-

Such type of crime involves betrayal of trust implied in the holding of the position or an office.

These are committed by people in course of their profession who belong to high strata.

These crimes pose a threat which is greater as compared to other crimes to the society as these encourage cynicism and distress amongst the members. These crimes also incur huge financial loss to the society which in turn affects the development of the society on the whole.

White-collar crimes majorly are conducted using the special knowledge or the position that the offender holds in the society. The immoral, un-ethical and illegal acts that are conducted so as to gain material benefits using the professional or positional edge over and above the others constitute white-collar crime.

There have been various definitional issues regarding white-collar crimes. White-collar crimes were never defined by Sutherland but he quoted that —a crime committed by a person of respectability and high social status in the course of his occupation.

Herbert Edelhertz proposed to define white-collar crime as "an illegal act or series of illegal acts committed by nonphysical means and by concealment and guile, to obtain money or property, to avoid payment or loss of money or property, or to obtain business or personal advantage"<sup>1</sup>

Hartung defines a —white-collar offense as a violation of law regulating business, which is committed for a firm by the firm or its agents in the conduct of its business.<sup>2</sup>

### White-Collar Crimes in India

India is a developing nation holding 19th position in density of population index in the world and it is also the most populous country. India is surely on the way to become one of the leading economies in the world. This can be said through estimates given by various agencies. A lot of nations in the world look up to India as a reliable partner. Even nations like the U.S. and Russia have always been keen on establishing friendly relations with India. Indian economy is growing fast and hence there is a rise in economic crimes.

The white-collar crimes hurt a society like India even more as there is high demand and supply of commodities and there is huge burden on the resources due to population explosion. Also the feeling of nationalism is low in Indians. This may be due to the existing economic, political and social conditions in the country. The people are more religion centric rather than nationalists.

White-collar crimes such as cybercrimes, bank frauds, counterfeit currency etc. cause huge damage to the economy. And the criminals of such severe crimes escape with fine of few thousand of rupees. Only 4% of white-collar criminals got convicted at the Supreme Court.

The people who indulge themselves in tax-evasion, avoidance of payment of taxes, by manipulation of accounts accumulating large amount of money, suppression of profits through under valuation of immovable property and its transactions are capable of doing corruption. Corruption cannot exist without this class of people and to eliminate corruption we need to act upon these people along with the public servants.

The Vivian Bose Commission exposed these tendencies in the infamous Dalmia-Jain<sup>3</sup> and Mundhra cases<sup>4</sup>. These two were the two major cases under white-collar crime in the independent India. The Dalmia-Jain Group of Companies, then the third biggest in the company was held responsible under various heads such as different degrees of fraud, mismanagement, manipulation, and destruction of records, gaining personal benefit on the expense of public investments, tax-evasion and various other violations of trust.

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<sup>1</sup>Edelhertz, Herbert. The nature, impact, and prosecution of white-collar crime. Vol. 2. National Institute of Law Enforcement and Criminal Justice, 1970.

<sup>2</sup>Hartung, Frank E. "White-collar offenses in the wholesale meat industry in Detroit." American Journal of Sociology 56.1 (1950): 25-34.

<sup>3</sup> 1972 83 ITR 438 SC, (1972) 4 SCC 422, Shanti Prasad Jain v. State

<sup>4</sup> AIR 1959 AII 82, 1959 CriLJ 113

However, it is not only businessmen or the public servants that are involved in the white-collar crimes. With the changing and dynamic scenario even, a common man is and can be a white-collar offender.

As discussed above the term “white-collar crime” can be described as, “Any act whether illegal or unethical done with the intention to gain material benefit whether immediate or deferred, in cash or in kind done in the capacity of the knowledge or the position the person holds which ultimately results in financial benefit is white-collar crime.” Hence a common such as a person doing job in a private organization, or a person who is self-employed, or a poor person such as green grocer can also be a white-collar offender.

A common man can commit tax evasion, or any employee of a private concern can commit offences such breach of trust or a green grocer can give you rotten vegetables by changing them while you were not attentive. All these are done with a view to extract more money, profit or any other benefits. In a country like India where a good amount of population is still poor, to satisfy the needs a person can take route of unethical and illegal means.

The white-collar crimes in India are rising and innovating. Every year con minds find new techniques and methods to commit these crimes. Hence India needs to be proactive and dynamic in dealing with the crimes.

As per the KPMG’s report<sup>5</sup> which is a leading survey company found that the corruption and bribery are the most occurred white-collar crime in India with 83% of people either experienced/heard or read about. Cybercrime follows with 71%. Cybercrimes include ATM, OTP, Ecommerce, Internet, and other related crimes. The next in the line is diversion of assets or funds or theft of goods with 65%. Then follows the frauds related to financial crimes with 59% popularity. Then the next most popular white-collar crime in the list is regulatory noncompliance at 53% followed by money laundering at 47%. Next in the list is internal reporting with 44% followed by crimes related to intellectual property with 40% popularity and at last the other crimes at 34%.

Following few are the most popular white-collar crimes:

**Corruption And Bribery:** The first and most common white-collar crime is corruption and bribery. This is one major road block in the path of the development of the country. The corruption is like a termite which eats upon the development of the country and to be fair to say is a global issue. No country in the world is completely immune to this problem. In some countries it is more and in some less, but it is present. As per corruption perception index reported by Transparency Index India is ranked at 80 amongst 180 least corrupt countries. Corruption is not only prevalent in government sector but has widespread impact in private sector too. Corruption in sectors like banking, corporates, universities and other institutions is well known and prevalent. The corruption in political parties is most prevalent in India.

**Tax Evasion:** A major problem which damages the progress of the country is tax evasion. We all are well aware that the country runs on the money that is generated through different taxes such as income tax and sales tax, excise (now combined under GST). Also the development of the infrastructure depends on the money that is generated through road tax, wealth tax, and house tax. People evade taxes and this hampers the development of the state, such as roads, sanitation and other such areas which fall under the government. Although there have been various reforms undertaken to eliminate the lacunas in the system which were used by the violators to evade taxes. E.g. the mechanism that is used to file GST with very strict checks and scrutiny has to some extent checked the evil. People find new ways to bypass the laws and violate them to gain extra profit but with dynamic methods and vigilant machinery this can be controlled. The problem lies in the complexity of the tax laws in the country which has sufficient loopholes for the tax payers to evade taxes. People employ different techniques and formulae such as undermining income, nondisclosure of rent incomes, inflating expenses such as depreciation, and formation of shell companies etc. to evade taxes. Also people buy goods and services in black that is without issuance of bill which is most common source of evading indirect taxes i.e. GST. In case of Income tax which is a major contributor towards the income of the state, the major concern before the department of Income Tax is to assess the actual or real and exact income of the tax payer. The department relies on the information provided by the tax payer himself, and unless and until a big expense such as purchase of car, house or any foreign trips are undertaken by the tax payer they easily escape the scrutiny. In these cases too, the tax payer using the loopholes in the system escape from the provisions of law and evade the right amount of tax payable. This tax evasion

<sup>5</sup> KPMG fraud survey 2012; Source: <https://www.livemint.com/Companies/Ls0kNvx9bsfubxBxDb5T2M/Whit-collar-crimesees-substantial-increase-KPMG-survey.html>

also enables circulation of huge amount of black money in the market. This causes considerable loss to the government revenue and eventually the development of the country.

**Cybercrimes:** Cybercrimes has recently risen as the biggest threat. With the advent of technology the dependence and the use of tech in each and every aspect of life has increased manifold. Nowadays we are dependent on technology for various day to day activities. India as discussed above is far from achieving 100% literacy. A good percentage of the population is yet not aware of the pros and cons of the use of technology. The biggest threat lies in banking sector where we can see that the card frauds are the biggest menace. Although the people are regularly made aware that they should not disclose their debit card/credit card PIN to anyone nor they should disclose the CVV, yet many people fall prey to the cons who dupe people of their money. Other types of cybercrimes such as sexual harassment, online insurance, lottery, hacking and other petty crimes also should be addressed properly. The child pornography is another serious issue. As per a research it was found that early exposure to pornography induces a person towards committing sexual crimes.<sup>6</sup>

**Food Adulteration:** Yet another problem is the tendencies of businessmen to hoarding, black marketing and adulteration. In a country like India where resources are less and demand is in abundance, the chance of the crime increases many folds. Hoarding is a process where the rich traders acquire huge amounts of the goods and store them for long time to create a false shortage in supply which in turn increases the price of the goods. And when the prices rise they start selling the goods at a higher price and make huge profits. Similarly black marketing is selling essential goods which are in shortage at a higher price than fixed by the authorities. E.g. shop owners sell goods from ration shops through black marketing at a higher price in open markets. Food adulteration poses a great risk not only for the economy but also to the health of the consumers, Manufacturers and shopkeepers adulterate food products by mixing similar but dangerous substances to increase the quantity of the stuff. Like adding water to milk is most common example. Horse dung is mixed with coriander powder used as a spice. Spurious mawa and milk are made by using detergents and harmful chemicals. Every year during festive season the food and family and health department conduct surveys and collect samples to test for adulterated food. The following stats show that how many surveys are conducted in which how many spurious samples are found and how many culprits are convicted.<sup>7</sup>

**Counterfeiting:** Counterfeiting also falls under white-collar crimes. Counterfeiting of currency is a blue-collar crime and is an intense crime attracting severe punishments. Counterfeiting of designer clothing, watches and other articles does fall under white-collar crimes.

**Professional Deviances:** These are the illegal or unethical practices undertaken by the professionals such as doctors, lawyers, educationists, media persons etc. we shall be discussing this in detail in the following chapters to come.

**Money Laundering:** The transfer or investment of money earned from sources which are illegal such as racketeering or drug trade or other embezzlement schemes in such a manner that it appears that its original source is legitimate or cannot be traced. This crime is of very serious nature and is severely punishable.

#### **Reasons for the Growth of White-Collar Crimes in India**

Above we have discussed various white-collar crimes in India. From the data we can come to a conclusion that these crimes are increasing in number and magnitude of the impact. The anti-social elements find new ways to commit crimes and dupe people and the country of its resources and money. The question arises what are the reasons for the growth of these white-collar crimes specifically in India. The reasons are as follows:

India is a country with huge population, and hence there is always greater demand of goods rather than the supply. This encourages people of profiteering by illegal and unethical means. As seen in the case of food adulteration.

With great number of population is uneducated and illiterate. This makes them easy pons for the crimes.

The people are less aware of their rights and duties, or they are ignorant towards them hence this encourages the crimes.

The legal and judicial process is complex as well as comes with a cost which prevents lot of people in reporting these crimes and seeking a remedy, hence gives a boost to the crimes.

<sup>6</sup>Corne, Shawn; Briere, John; and Esses, Lillian (1992). Women's Attitudes and Fantasies about Rape as a Function of Early Exposure to Pornography. Journal of Interpersonal Violence. 7, 454- 461.

<sup>7</sup> Retrieved from: —<https://www.newindianexpress.com/nation/2018/nov/05/25-food-samplesfound-adulterated-1894393.html>(based on NCRB data)



The rich and powerful control the politics and up to some extent the media is also not immune from corruption and favoritism. Hence the true picture and magnitude of the crimes do not come in the eyes of the public. This somehow gives cushion to the accused to commit these crimes

In most the crimes the punishments are very lenient such as fines, which the accused don't find difficult to pay. Also, in many cases the identity of the accused is not disclosed once he pays the fine. This encourages repeated crimes.

The system that governs the enforcement agencies also prevents them from acting freely and hence in cases where the politicians or rich are involved the pressure on the enforcement agencies drives them away from investigating them and taking action on them.

Lack of moral and ethical teaching and training at the grass root level or in the very childhood prevents the development of the moral values in the individual. In ancient times the Indian education system emphasized on teaching of moral and nationalist values and hence we find that in ancient India these crimes were in negligible numbers but with the change in education system lack of imparting value education as a primary subject impact the personality development of the individual.

### **Judicial Response against White Collar Crimes**

Judiciary is the third pillar of the democracy and is often regarded as the custodian of the constitution and the rights of the people. Apex Judiciary not only decides the cases on the basis of laws but also sets precedents for other courts which become laws. The role of the judiciary is most critical in dealing with the problem of white-collar crimes. As rightly said by the Apex court "let not the mighty and rich think that courts are their paradise and in the legal arena they are the dominant players"<sup>8</sup>. The doors of the courts are opened for all. The major problem that the country faces today is that of increasing white-collar crimes as these crimes affect the whole socio-economic condition of the society. These crimes also pose great threat to the general psychology of the citizens. And amongst the various white-collar crimes the most damaging is corruption. Corruption is the greatest threat to the country. The corruption hampers and retards the growth, development, and welfare of the country the most and to the maximum extent<sup>9</sup>.

The corruption costs great to the economy of the country. The cost is both direct and indirect. Direct impact is visible and can be assessed but the far greater indirect impact is not only difficult to assess but is also more devastating. The impact of corruption is on all the sectors of the economy whether Public or Private. It impacts all sections of the society in one way or the other whether poor, middle class or the rich and powerful. The degree of impact may vary but in one way or the other all sections of the society are the victims of the corruption.

The Prevention of Corruption Act 1988 was for to fight the prevalence of corruption which the country is facing from times immemorial. The strict vigilance can be acknowledged through various important judgments by the different High Courts and the Supreme Court in the case of **Subramanian Swami v. Manmohan Singh**<sup>10</sup> Justice A.K. Gangulisaid "corruption in our country today apart from posing great danger to the concept of Constitutional Governance it threatens the rule of law and the very foundation of the Indian Democracy. The magnitude and the nature of the corruption is incompatible with the concepts of socialist, secular, and democratic republic imbibed in the Constitution and the Preamble. The rights end where corruption begins is undisputed fact. The human and fundamental rights of justice, liberty, equality, and fraternity are undermined by the corruption. And hence it is the duty of the courts to implement the anti-corruption laws in such a manner to strengthen the fight against corruption.

The Apex Court in **J. Jayalalitha v. Union of India**<sup>11</sup> stated that "corruption corrodes the moral fabric of the society. It also said that that when a public servant involves in corruption causes harm to the national economy and national interest and also to the image of the nation in the world 's eye."

In the case of **Common Cause v. Union of India**<sup>12</sup> dealing with liability of the public servants the court said that "with the changing socio-economic constraints the public servants are assigned with more discretionary powers while dealing

<sup>8</sup>Rathinam v. State of Tamil Nadu and Anr, (2011) 11 SCC 140

<sup>9</sup>Mota Ram v. State of Haryana, AIR 2010 SC 3780, (See also State of Madhya Pradesh v. Ram Singh, AIR 2000 SC 870, Subramanian Swamy v. Manmohan Singh, (2012) 3 SCC 64).

<sup>10</sup> Subramanian Swami v. Manmohan Singh (2012) 3 SCC 64

<sup>11</sup> J. Jayalalitha v. Union of India, AIR 1999 SC 1912

<sup>12</sup> Common Cause v. Union of India, AIR 1997 SC 1886

with disbursing of the public wealth in various forms. The Court stated that —when any act or omission in relation to the abuse of his powers results in the injury to an individual or the loss of public wealth and property, an action shall be maintained against such public servant. The corrupt officials should be dealt with severely and it should be ensured that provisions of the laws such as Cr. P.C. etc. do not overrule the provisions of Prevention of Corruption Act as otherwise the motive of the act would be defeated.”

While dealing with the issue of corrupt bureaucracy with hard measures even the senior bureaucrats in the case of **A. Watiao v. State of Manipur**<sup>13</sup> the Supreme Court stated that “while dealing with the cases of corruption of a responsible government employee and punishment of imprisonment till the rising of the court is making a mockery of the justice and the lower courts should have taken a serious note of such happenings.”

The bribes are not only given in cash but also in the form of valuable items. In a case of **Delhi Administration v. S.N. Khosla**<sup>14</sup> the court decided that “when a valuable item is given without any consideration and the reminders and the receipts are just a formality then the valuable item shall be considered as bribe. However, if the goods are merely taken on credit and there is no agreement but an intention to pay it would not be considered as bribe”

In the case of **R. Sai Bharathi v. J. Jayalalitha**<sup>15</sup> the Supreme Court said that “minimum standards of behaviour are merely described by the Criminal Law. Whereas those who hold high public offices in public life should not take shelter under the umbrella of criminal law but should act in a highly responsible manner. Putting ones self-interest before the interest of the country or society while using the public and government resources should be strongly condemned”

Sec 19 of the Prevention of Corruption Act a prior permission is required before prosecution against a public servant. In the case of **Dilawar Singh v. Parvinder Singh**<sup>16</sup> the Supreme Court held that “the provisions of Sec 19 of Prevention of Corruption Act shall have an overriding effect on the general provisions contained in Sec 190 or 319 of the Cr. P.C. While trying an offence under the Prevention of Corruption Act a special judge cannot summon another person and proceed against him under the power given to him by Sec 319 of the Cr. P.C. if no sanction has been granted by the appropriate authority for prosecution of such person. The prior sanction is qua non for taking cognizance of the offence. But if the officer has resigned before the prosecution begins then no prior sanction is required.”

In the case of **State of Himachal Pradesh v. Narendra Kumar**<sup>17</sup> where the food adulteration occurrence took place approximately two decades ago. The accused was acquitted by the lower courts though erroneously. Keeping in view the nature and peculiar facts of the case the accused was sentenced 6 months RI and fine of Rs. 1000. The court by this sentence made it clear that the accused if moves to the government to commute the sentence the accused shall not be set free and the accused shall surrender to serve the sentence.

In the case of **Ram Narayan Poply v. C.B.I.**<sup>18</sup> the court said that “offences in the cases of white-collar crime are not of conventional or traditional types, the ultimate objective is to use public money in a very carefully planned manner for personal use with no right to do it. The entire country is affected if the white-collar criminals are not dealt with properly. An economic offense is committed deliberately and with a well-planned and cool set of minds and with disregard to the community and the country for the personal use.”

We from the above have seen that the courts from time to time have given impetus to the laws and this has made the laws more strict. The escape routes that the accused could have used through other laws were blocked by various judgments. It is when all the three pillars i.e. legislature in making laws, administration by implementing the policies and the judiciary by providing effective and timely justice along with the people who can develop feeling of honesty and above all patriotism the weed of corruption can be permanently uprooted.

<sup>13</sup> A. Watiao v. State of Manipur, AIR 1996 SC 361

<sup>14</sup> Delhi Administration v. S.N. Khosla, AIR 1971 SC 1480

<sup>15</sup> R. Sai Bharathi v. J. Jayalalitha, 2004 (2) SCC 9

<sup>16</sup> Dilawar Singh v. Parvinder Singh, (2006) 1 SCC (Cri) 727

<sup>17</sup> State of Himachal Pradesh v. Narendra Kumar and Another 2004 AIR SCW 1168 : 2004 ALL MR (Cri.) 111 (S.C.)

<sup>18</sup> Ram Narayan Poply v. C.B.I., (M.B. Shah, J.) 141 04