

The Judicial Response to White Collar Crimes and the Deviance Committed by Privileged Class

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Abstract: *White-Collar Crime is intrinsically a violation or breach of trust reposed in a person by the society. White-collar crimes destroy mutual trust and community morale. Since criminals of this type mostly belong to the leading class and since members of this class, even if they do not themselves participate in such crimes, are reluctant to attack the other members, leadership is lacking in the fight and there is no effective plan for the enforcement of the law. Because of their social prestige and political influence, white-collar criminals are but seldom prosecuted and even more rarely convicted.*

The credit for coining and popularising the phrase 'White Collar Crime' goes to the American Sociologist and Criminologist, Prof. Edwin H. Sutherland, who thus, extended the frontiers of criminology by including the study of this offence into its area. Presenting his address to the American Sociological Society in 1939, Sutherland defined White-Collar Crime as "crimes committed by persons of respectability and high social status in the course of their occupations". Another time he said: "the White-Collar Criminal is defined as a person with high socio-economic status who violates the laws designed to regulate his occupational activities."

Our social system is corrupted by number of white-collar crimes causing an irreparable damage to the society at large. The willingness to corrupt and capability of corrupting, both are present in a large measure in the industrial and commercial sector thereby nurturing the system of quasi corrupt Indian society to a complete corrupted one. Moreover, the increase in the business transactions combined with the lack of legal control, effective internal control mechanism and adequate risk management strategies has forced the legislators to pass certain laws. It may be noted at the very outset that White-Collar Crime is not the terminology in use anywhere in the Indian Penal Code, 1860 which is the Bible of Indian Criminal Laws..

Keywords: Deviance, White-collar crime, violation, socio-economic crime

I. INTRODUCTION

White collar crimes refer to those anti-social activities which are committed by persons of respectability and high social status in the course of their occupation and profession. Such activities involve variety of injurious actions violative of regulatory, civil or criminal laws. It has characteristics similar to that of corporate crimes like fraud, embezzlement, money laundering, infringement of copyright, bribery, counterfeiting, insider trading, cyber-crimes, forgery, tax evasion, adulteration etc. Prof. Edwin Hardin Sutherland defines a white-collar criminal as a person of upper socio-economic class who violates the criminal law in the course of occupational or professional activities.

Unfortunately, in the last few years, there has been a consistent rise in the occurrence of serious frauds and white-collar crimes globally posing a threat to the economic structure of the country. Prof. E.H. Sutherland was the first to introduce the concept of white-collar criminals who possess different characteristics and motives than typical street criminals and their illegal actions are not dependent upon the application or threat of physical force or violence.

Prof. Sutherland's contribution is unmatched in the sense that he was the first criminologists who sought to extend the frontiers of criminology by including in it the study of white-collar crimes. Prior to his focussing attention on white collar criminality, criminologists confined themselves to the study and research of blue-collar crimes, i.e., traditional



crimes like theft, burglary, robbery and acts involving violence committed by persons of lower socio-economic status. Prof. Sutherland was preceded by others who were aware of the damage to society from the upper socio-economic groups who exploited the accepted economic system to the detriment of the masses.

However, considering the situation in India, as also explained by Prof. Hugh Barlow, mostly white-collar crimes are committed by the people of lower social strata in their occupational capacity for instance adulteration of milk by the milk man, selling adulterated food by shopkeeper, selling expired medicine, taking out few kilos of gas from the cylinder etc. In fact, many cases of insider trading, perjury, obstruction of justice, tax fraud, bribery, extortion etc., cannot always be said to be elite. White collar crime is more dangerous than any ordinary street crime because the financial loss to the society from white collar crimes can devastate an entire community rather than robbing a lone victim. White collar criminals are opportunists who take advantage of their circumstances to accumulate financial gain.

Our social system is corrupted by number of white-collar crimes causing an irreparable damage to the society at large. The willingness to corrupt and capability of corrupting, both are present in a large measure in the industrial and commercial sector thereby nurturing the system of quasi corrupt Indian society to a complete corrupted one. Moreover, the increase in the business transactions combined with the lack of legal control, effective internal control mechanism and adequate risk management strategies has forced the legislators to pass certain laws in India like Essential Commodities Act, 1955, Industrial (Development and Regulation) Act, 1957, Import and Export (Control) Act, 1947, Companies Act, 1956, Foreign Exchange (Regulation) Act, 1973, Central Excises and Salt Act, 1944, Prevention of Corruption Act, 1947, Income Tax Act, 1961, Customs Act, 1962, The Conservation of Foreign Exchange and Prevention of Smuggling Activities and Smugglers and Foreign Exchange Manipulators (Forfeiture of Property) Act, 1976.

Despite passing such legislations, white collar crimes have grown commensurately in the nation and mostly go undetected, unprosecuted, and unpunished due to lack of police or authoritative efforts in implementation of such laws or sometimes the legislators and law implementers belong to the same class to which the occupational criminals belong. Also, such criminals are educated, intelligent, rich and confident enough to defraud their victims into believing and trusting in their credentials. Thus, it is important to discover suitable social defence resolutions to prevent, detect, investigate and prosecute such criminals and curb this increasing menace of white-collar crimes without discouraging healthy business growth.

The Genesis of White-Collar Crime

The concept of white-collar crime is not new, it found its place in criminology in 1939, when Sutherland published his research paper on white collar crime in 'American Sociological Review'. So, the concept of white-collar crime defined by Edwin Sutherland in his valuable work in this area focused the attention of criminologists on this topic. Sutherland coined the phrase 'White Collar Crime' in 1939.¹

Criminologist and Sociologist Edwin Sutherland first popularized the term 'White Collar Crime' in 1939. Sutherland's study of white-collar crime was prompted by the view that criminology had incorrectly focused on social and economic determinants of crime, such as family background at all level of wealth. According to Sutherland's view, crime is committed at all levels of society and by persons of widely divergent socio-economic backgrounds. In particular, according to Sutherland, crime is often committed by persons operating through large and powerful organizations. White collar crime, Sutherland concluded, has a greatly underestimated impact upon our society.²

¹ Edwin H. Sutherland, White Collar Crime: The Uncut Version 7 (1983). Sutherland used the term in a 1939 speech, entitled "*The White-Collar Criminal*," he gave to a joint meeting of the American Sociological Society and the American Economic Association. For a further discussion of the definition of '*White Collar Crime*,' see J. Kelly Strader, *The Judicial Politics of White-Collar Crime*, 50 Hastings L. Rev. 1199, 1204-14 (1999).

² Sarvani V. Vaidya, Privileged Class Deviance, p.5.



Sutherland's definition of 'white collar crime' was criticised from various levels. Gilbert Geis³ criticised Sutherland's definition opining that in his definition Sutherland omitted the corporations and multi-corporations and only concentrated on the individuals. Gilbert Geis opined that white collar crime is an organized crime and can be done only by the cooperation and with the participation of several persons, hence this crime can be called as 'corporate crime' or 'occupational crime'. Subsequently Sutherland modified his earlier definition of 'white collar crime' and also included crimes committed by corporations and other legal within his definition.

Due to industrialization, urbanization and with increase in competitive tendency of men, such types of white-collar criminality are common and so the definition of Sutherland of white-collar crime was elaborated and discussed in 'New Horizons in Criminology' by Barnes and Teeters in 1943⁴ and brought a revolutionary change in the concept of crime and criminals of white-collar crime.

Barnes and Teeters define 'white collar crime' as a violation of criminal law by a person of upper-socio-economic classes in the course of his occupational activities and such crimes adversely affect the health and material welfare of the community and threaten the entire economic fabric of the society. They also stated that, such criminals due to their political and financial assistance can easily escape from the hands of prosecution and these criminals are so powerful that they able to capture the administrative machinery of the society.⁵

As an alternative to the socio-economic definition, many define 'white collar crime' based instead upon the manner in which the crime is committed. In 1981, the United States Department of Justice described white collar crime as non-violent crime for financial gain committed by means of deception by persons whose occupational status is entrepreneurial, professional or semi-professional and utilizing their special occupational skills and opportunities; also, non-violent crime for financial gain utilizing deception and committed by anyone having special technical and professional knowledge of business and government, irrespective of the person's occupation. This definition focuses on the use of deception as the criminal means.⁶

Following are some of the definitions of white-collar crime given by different criminologists:

Larry J. Siegel in his book on Criminology said, *'White collar crimes are illegal acts that capitalize on a person's place in the market place and which can involve theft, embezzlement, fraud, market, manipulations, restraint of trade, false advertising, etc.'*⁷

Clinard and Quinney (1973) says, *'Occupational crime consist of an offence committed by individuals for themselves in the course of their occupation and the offences of employees against their employers-corporate crimes are the offences committed by corporate officials for the corporation and the offences of the corporation itself.'*⁸

Edelhertz (1970) has expressed his views about white collar crimes as *'an illegal act or series of illegal acts committed by non-physical means and by concealment or guile, to obtain money or property, to avoid the payment or loss of money or property, or to obtain business or personal advantage.'*⁹

According to Albert Reiss and Albert Biderman (1980), *'white collar violations are those violations of law to which penalties are attached that involve the use of a violator's position of significant power, influence or trust in the*

³ Gilbert Lawrence Geis (January 10, 1925 – November 10, 2012) was an American criminologist known for his research on white-collar crime.

⁴ **'New Horizons in Criminology'** by Harry Elmer Barnes and Negley K. Teeters, Prentice-Hall, New York—1943, p.437.

⁵ *Ibid.*

⁶ Shailesh Kumar Singh, *White Collar Crimes*, p.6.

⁷ Rohinton Mehta, *Crime and Criminology*, Snow White Publication, Bombay 1st Edn., p.8.

⁸ *Ibid.*

⁹ *Ibid.*



*legitimate economic or political institutional order for the purpose of illegal or to commit an illegal act for personal or organizational gain.*¹⁰

These definitions make it clear that with the advancement of the time, the definition of a white-collar crime was also modified by various criminologists so as to be included in it the changing new dimensions of these crimes. Sutherland originally applied the term in a limited sense because his focus was mainly on corporate criminality but gradually it opened new frontiers with the advancement of science and technology. The central theme of these crimes has been the persons of upper world. So white collar crimes as sometimes also called 'upper world crimes' committed during their course of business or profession.

Perhaps a better way to look at white collar crime is to focus on the ways that practitioners and judges distinguish white collar crime from common or street crime. A white-collar prosecutor or defence attorney, for example, would more likely define 'white collar crime' as crime that does not:¹¹

Necessarily involve force against a person or property;

Directly relate to the possession, sale, or distribution of narcotics;

Directly relate to organized crime activities;

Directly relate to such national policies as immigration, civil rights, and national security;

Directly involve 'vice crimes' or the common theft of property.

White collar crimes, which are the result of social disorganization, competitive tendencies and a lust of money and power, cause greater financial loss to the society than the loss suffered by society from other crimes. These offences irreparable damage to the economy of the nation, thereby affecting the growth and development of the country.

Some of the major impacts of these offences can be illustrated as "*increase in inflationary pressure, distortion of developmental work, uneven distribution of resources and creation of elitism, marginalization of tax-base, generation of black money, creation of parallel economy, country's economic equilibrium is shaken, breeding ground of corruption, illicit business and public office corruption thrive and affect normal business activities, resources of financial and commercial institutions are diverted and distorted, moral and commitment of citizen is weakened, the poor/weakest continue to be poorer and are at risk and so on.*"¹²

The most unfortunate aspect of white-collar crimes is that despite wide ranging economic and social affects, there is no organized social agitation against them. The possible reason perhaps is that unlike ordinary criminals, white collar criminals belong to the high society and the community does not easily organize itself in initiating action against them. Due to the increasing trend of white-collar crimes, it is high time to recognize the importance of the impact of these crimes. These crimes are committed with the connivance of the highly placed people, the authorities and innocent public is being exploited because it is uneducated and unskilled to recognize the gravity and impact of these crimes.

Types of White-Collar Crimes

The types of deviances committed by privileged class under the head of white-collar crimes may be summarised as follows:¹³

Frauds in business in relation to sale of bonds and investments;

Food and drug adulterations;

Misleading advertisements;

¹⁰ *Ibid.*

¹¹ *Ibid.*

¹² Crime in India (1994), op. cit., pp.327-28.

¹³ Law Commission, Report No. 29, pp.10-11.



Malpractices in the medical profession, such as illegal sale of alcohol and narcotics, illegal abortion, illegal services to underworld criminals, fabrication of false medical reports and testimony in accident cases, extreme cases of unnecessary treatment, fake specialists, restriction of competition and fee splitting;
Unethical malpractices by legal professionals that are outside the scope of their professional services;
Cybercrimes, transnational crimes;
Tax evasion;
Crimes by lawyers, such as guiding criminal or quasi-criminal activities of corporations, twisting of testimony to give a false picture, fake claims (bogus liability in accidents);
Trusts, cartels, combines, syndicates, etc., formed to combat competition, or to raise prices or otherwise to interfere with the freedom of trade to the detriment of honest businessmen or the consuming public.
Bribery and corruption by public officers.

The Judicial Response to the Deviance Committed by Privileged Class

The main purpose of administrative law is to establish a government of law, though incidentally it happens to be a government of men. One of the cardinal principles of 'Rule of Law' is that the various powers of government must be exercised according to law. Therefore, judicial control over administrative action becomes more important. Control over the power of administration and against its improper use can be obtained under the Indian system by many ways. They are as follows:

By seeking a writ from the Supreme Court under Art. 32 of the Indian Constitution, when one can claim that fundamental rights have been violated.

Under Articles 226 and 227 of the Indian Constitution, the aggrieved person can approach the High Court for the violation of the fundamental rights, or on the ground that there has been a substantial injury on account of administration action.

The third method is to file a suit against the government or public authorities, for damages, restitution, injunction or a declaration.

The broad theory of judicial control of administrative action can be called the doctrine of *ultra vires*.¹⁴ The administrative powers are derived from law. The statute gives power for certain purposes only or subject to some special procedure or with some other kind of limits. The limits are to be found not only in the statute itself, but in the general principles of construction which courts apply.

There are some faults in the administrative act which renders it *ultra vires*. Such fault might arise either on account of lack of power or improper exercise of power. Such improper use of power may also be due to either wrong manner in which it is exercised or on account of the state of mind with which it is exercised. Such loopholes in administration have been filled up by judiciary at many times by the land mark decisions. It has rescued ordinary citizens from the clutches of abuse of administrative discretionary power by state officials. With the increasing phenomenon of judicial activism, the judiciary has adopted a healthy trend of interpreting law in social context by way of Public Interest Litigation (PIL), which has opened new views for the redressal of social problem.

The following cases mentioned below are examples of check over discretionary power of judiciary with the vast widening scope of judicial activism, so that, there are proper limits to discretionary power of state officials.

¹⁴ *Ultra vires* ('beyond the powers') is a Latin phrase used in law to describe an act that requires legal authority but is done without it. Its opposite, an act done under proper authority, is *intra vires* ('within the powers'). Acts that are *intra vires* may equivalently be termed 'valid', and those that are *ultra vires* termed 'invalid'.

https://en.wikipedia.org/wiki/Ultra_vires



In *Nargesh Meerza Vs. Air India*,¹⁵ the services of the air hostess were terminated by the authority arbitrarily because of her pregnancy. The judicial arms helped the air hostess and held that the termination of service on pregnancy was strikingly unreasonable and arbitrary and was therefore, clearly violative of Art. 14 of the Indian Constitution and hence declared that these types of rule and uncontrolled power of the managing authority of Airport is excessive delegation of power.

In *State of Maharashtra Vs. M.H. George*,¹⁶ the accused was prosecuted for bringing into India certain quantity of gold in violation of the statutory prohibition. The majority of judges of Supreme Court held that *mens rea* in the sense that actual knowledge that the act done is contrary to law is not essential under Sec. 8(i) read with Sec. 23(i)(a) of the Foreign Exchange Regulation Act, 1947. Therefore, the Court held that the accused is liable as the existence of *mens rea* (guilty mind) is not an ingredient of such an offence. Thus, Courts in India have been giving a strict interpretation of the socio-economic statutes.

B.C. Soni Vs. State of West Bengal,¹⁷ this is a case of gold smuggling. Justice Krishna Iyer with Justice Sarkaria laid great emphasis on the essence of strict penal process for White-Collar Offenders. They held:

"The penal strategy must be informed by social circumstances, individual factors and the character of the crime. India has been facing an economic crisis and gold smuggling has had a disastrous impact on the State's efforts to stabilize the country's economy. The ineffectiveness of prosecutions in arresting the wave of white-collar crime must disturb the judges conscience. While we agree that penal treatment should be tailored to the individual, in extreme category of professional economic offenders, incarceration is peculiarly potent."

State Vs. Drupati,¹⁸ this is a case under Import and Exports Control Act, Justice Abhyankar observed:

"A serious view must therefore be taken of such white-collar offences, which show a distressingly growing tendency. The argument that the accused comes from respectable or high-profile family rather emphasises the seriousness of the malady. If members belonging to high status in life show scant regard for the laws of this country, which are for public good, for protecting our foreign trade or exchange position, of currency difficulties, the consequential punishment for the violation of such laws must be equally deterrent."

Som Prakash Vs. State of Delhi,¹⁹ while commenting on the corruption amongst government officers, Justice Krishnaya Iyer said:

"Of course, our social milieu is so vitiated by a superstitious belief that any official can be active by illegal gratification, so confidential is the technique of give and take in which white-collar offender is adept and so tough is the forensic problem of proof beyond reasonable doubt by good testimony in this area, that the only hope of tracking down the tricky officer is by laying traps and creating statutory presumptions. In this social context judicial severity cannot err on the low side and we think the 'ends of justice' referred to by High Court for toning down the sentence is perhaps an error on the side of leniency."

In *Pratap Singh Vs. State of Punjab*,²⁰ the Supreme Court held that improper purpose of state officials in exercise of administrative function is broader than *malafides* (one of the ground on which the abuse of discretion can be stated) and where a discretionary power is exercised for an improper purpose or for a purpose other than the purpose of carrying into effect, it is an act of abuse of discretionary power.

¹⁵ 1981 AIR 1829, 1982 SCR (1) 438.

¹⁶ AIR 1966 SC 43.

¹⁷ AIR 1974 SC 120.

¹⁸ AIR 1965 SC 6.

¹⁹ AIR 1974 SC 989.

²⁰ AIR 1964 SC 72.



In *Noorchand Vs. West Bengal*,²¹ the court used the phrase ‘colourable exercise of power’, which does not differ substantially from improper purpose. The essence of this is that though the power is exercised under a statute, but ostensibly for the purpose visualized under the Act. In fact, it has been used for altogether different purpose not connected with this statute and therefore power exercised beyond the statute. Such administrative act is null and void, having no effect in law.

In *R.D. Shetty Vs. International Airport Authority & Others*,²² the International Airport Authority invited tenders for the establishment of a second-class restaurant and two snack bars at the International Airport in Bombay. The tender submitted by the fourth respondent was accepted. However, it was later discovered that the fourth respondent did not meet the tender condition requiring at least five years’ experience as a registered second-class hotelier. Despite this, the Airport Authority reaffirmed the fourth respondent’s tender, citing his significant experience with reputed clients, even though he was not a registered second-class hotelier.

Ramana Dayaram Shetty, the appellant, initially considered submitting a tender but refrained from doing so due to his failure to meet the specified conditions in the invitation. Upon learning that the fourth respondent’s tender was accepted despite non-compliance with the stipulated conditions, Shetty filed a petition under Article 226 of the Constitution in the Bombay High Court. The petition was dismissed, prompting Shetty to appeal to the Supreme Court under Article 136 of the Constitution.

The Supreme Court in *R. D. Shetty Vs. The International Airport Authority & Others*²³ held that the International Airport Authority’s actions were arbitrary and discriminatory, thus violating Article 14. The Authority, being an instrumentality of the State, was bound to adhere to the principles of equality and non-arbitrariness. The acceptance of the fourth respondent’s tender was declared invalid, reaffirming the importance of transparency and fairness in the State’s dealings.

*R. D. Shetty Vs. The International Airport Authority & Others*²⁴ underscores the judiciary’s role in ensuring that State actions comply with constitutional mandates and principles, particularly those related to equality and non-arbitrariness. The decision also clarifies the scope of ‘State’ under Article 12, extending it to entities with significant government control.

In *State of Punjab Vs. Gurdiyal Singh*,²⁵ it has been firmly established that the discretionary power given to the state officials is mostly provided by policy, standard procedural safeguards or guidelines. Otherwise exercise of such discretion and its delegation may be quashed by courts.

In *Baldev Rai Vs. Union of India*,²⁶ the Supreme Court quashed the order of compulsory retirement which had been passed by higher State officials, after taking into account adverse confidential reports of the employers instead of considering the compulsory retirement of last 5 years and Supreme Court held that it is a direct case of abuse of discretionary power.

²¹ AIR 1974 SC 2120.

²² AIR 1979 SC 1628.

²³ <https://lawbhoomi.com/ramana-dayaram-shetty-v-the-international-airport-authority-others-rd-shetty-v-airport-authority/#:~:text=Facts%20of%20RD%20Shetty%20v%20Airport%20Authority,-The%20International%20Airport&text=The%20tender%20submitted%20by%20the,a%20registered%20second%20Dclass%20hotelier.>

²⁴ *Ibid.*

²⁵ AIR 1980 SC 452.

²⁶ AIR 1981 SC 863.



In *M.H. Hoskot Vs. State of Maharashtra*,²⁷ the Supreme Court illustrated the attitude of the lower court towards white-collar criminals. Hoskot, a reader in Saurashtra University, was found guilty of an attempt to concoct degree certificates of the Karnataka University. The Sessions Court awarded him a single day imprisonment.²⁸ The court justified the token punishment on the basis of the background of the offender, his not having criminal tendencies as such and the unlikelihood of his indulging in criminal activities in future. On appeal by the State, the High Court enhanced the period of imprisonment to three years. While upholding the sentence awarded by the High Court, the Supreme Court termed the sentence awarded by the Sessions Court as ‘incredibly indiscreet’.

Besides prescribing stiffer punishments for white-collar offenders, the Supreme Court has also held in a number of cases that liberal interpretation must be given to the penal laws dealing with social welfare legislation to see that the legislative object is not defeated. In *Murlidhar Meghraj Loya Vs. State of Maharashtra*,²⁹ the court observed:

“It is trite the social mission of food laws should inform the interpretative process so that the legal blow may fall on every adulterator. Any narrow and pedantic literal and lexical construction likely to leave loopholes for this dangerous criminal tribe to sneak out of the meshes of the law should be discouraged. For the new criminal jurisprudence must depart from the old canons, which make indulgent presumptions and favoured constructions benefiting accused persons and defeating criminal statutes calculated to protect public health and the nation’s wealth.”

Similarly, in *State of Maharashtra Vs. Mohd. Yakub*,³⁰ the court was of the view that penal provisions calculated to suppress smuggling activities must be construed liberally. It may be noted that these rulings in favour of liberal interpretations of penal provisions relating to socio-economic crimes are at variance with the ordinary rules of construction of penal statutes which require strict interpretation and benefit of doubt, if any, must be given to the accused.

Finally, courts in India have given strict interpretation to the socio-economic statutes which do not require any *mens rea* either in the form of intention or knowledge for committing an offence. This is how it should be, though it may be pointed out that courts have been somewhat reluctant in finding *mens rea* excluded from statutes dealing with more traditional offences.³¹ Dealing with a violation of the Foreign Exchange Regulation Act, 1947 the majority in *State of Maharashtra Vs. Mayer Hans George*,³² held that the very object and purpose of the Act and its effectiveness as an instrument for the prevention of smuggling would be entirely frustrated if conditions were to be read into Sec. 8(1) or Sec. 8(1-A) of the Act qualifying the plain words of the enactment that the accused should be proved to have knowledge that he was contravening the law before he could be held to have contravened the provision.

Again, in *Pyarali K. Tejani Vs. Mahadeo Ramachandra Dange*,³³ a case under the Prevention of Food Adulteration Act, 1954, the Supreme Court said:

“It is trite law that in food offences strict liability is the rule not merely under the Indian Act but all the world over. Sec. 7 casts an absolute obligation regardless of scienter, bad faith and mens rea. If you have sold any article of food contrary to any of the sub-section of 7, you are guilty. There is no more argument about it.”

Corruption in Politics

Corruption among ministers and other political personages is more dangerous than corrupting in governmental machinery in terms of the enormity of states involved in public life. Corruption and indecency in political life informs all the sections of society since violations are committed by those very persons who are expected to set the norms of social and political conduct. It is common knowledge that many politicians in power and their kith and kin have reaped

²⁷ (1978) 3 SCC 544; 1978 SCC (Cri) 468.

²⁸ Imprisonment up to seven years is permissible under Sec.468 of IPC.

²⁹ (1976) 3 SCC 684; 1976 SCC (Cri) 493.

³⁰ (1980) 3 SCC 57; 1980 SCC (Cri) 513.

³¹ *Brend Vs. Wood*, (1946) 62 TLR 462 (DC).

³² AIR 1961 SC 722.

³³ (1974) 1 SCC 167; 1974 SCC (Cri) 867.



a good harvest in terms of money and good positions through the abuse of government machinery at their disposal. The Santhanam Committee noted that while there were elaborate rules to ensure probity among officials, there were none for Ministers, legislators and political parties.³⁴

The more usual forms of political corruption in India are bribery, violation of election laws and the abuse of official and political machinery because of the nexus of political forces with big business. The well-known episodes, known as Mundhra Sirajuddin Tul Mohan Ram, in the party affairs involving Central Cabinet Ministers and Members of Parliament are typical examples of political corruption. The cases of political corruption in India are on increase. Over the years, we have seen that the politicians/Ministers are involved in number of corruption cases, some of which are pending even before the various courts of the country. The *Bihar Fodder Scam Case*,³⁵ *2G Spectrum Case*,³⁶ *Cash for Vote Case*³⁷ and *Coal Scam Case*³⁸ are some of the examples.

In *J. Jayalalitha Vs. Union of India*,³⁹ the Supreme Court admitted that corruption is rampant amongst the public servants. Court further stated that corruption corrodes the moral fabric of the society and is harmful to the national economy. Corruption by persons occupying high posts in government, by misusing their powers can cause considerable damage to the national economy, national interest and image of the country.

In *Govt. of A.P. Vs. P.V. Reddy*,⁴⁰ the Supreme Court observed that when the legislature has given comprehensive definition of public servant to achieve the purpose of punishing and curbing growing corruption, it would be appropriate not to limit the contents of the definition clause by construction which would be against the spirit of the statute. The definition of public servant, therefore, deserves a wide construction. The court is required to adopt a purposive approach as would give effect to the intention of the legislature. Employees or servants of a cooperative society, which is controlled or aided by the government, were said to have been covered by the definition of 'public servant'.

In *Ram Narayan Poply Vs. C.B.I.*,⁴¹ the Supreme Court, defining the object and purpose of the Special Court (Trial of Offences Relating to Transactions in Securities) Act, 1992 observed that the Act was promulgated with a view to recover public monies lost by certain banks and financial institutions in securities where such losses arose as a result of such transactions. Court was concerned with the adverse of white-collar crimes, and held that offences in "*these cases were not of conventional or traditional types, the ultimate objective was to use public money in a carefully planned manner for personal use with no right to do it. The cause of the community deserves better treatment at the hands of the court in the discharge of its judicial functions. The community or the State is not a 'persona non grata' whose cause may be treated with disdain. The entire community is aggrieved if the economic offenders who ruin the economy of the State are not brought to book. A murder may be committed in the heat of moment upon passions being aroused. An economic offence is committed with cool calculations and deliberate design with an eye on personal profit regardless of the consequences to the community.*"

The Nexus between White-Collar Crime and Economic Crime

It is a matter of common experience that due to social and political changes in the country, new areas of economic crimes have emerged and focussed the attention of criminologists. The financial implication of these crimes are much greater than those of the traditional forms of violent crimes and crimes against property. Such crimes completely disturb

³⁴ Santhanam Committee Report, pp. 101-102.

³⁵ *Union of India Vs. Sushil Kumar Modi*, (1997) 4 SCC 770.

³⁶ *Centre for Public Interest Litigation Vs. Union of India*, (2012) 3 SCC 1.

³⁷ *P.V. Narasimha Rao Vs. State*, (1998) 4 SCC 626; 1998 SCC (Cri) 1108.

³⁸ *Manohar Lal Sharma Vs. Union of India*, (2014) 2 SCC 532; (2014) 4 SCC (Cri) 1.

³⁹ (1999) 5 SCC 138; *R. Sai Bharathi Vs. J. Jayalalitha*, 1999 AIR SCW 2257.

⁴⁰ AIR 2002 SC 3346.

⁴¹ AIR 2003 SC 2748



the basic economic and social structure of the country and through their impact on saving, investment, and foreign exchange availability, etc. result in mal-distribution of national income.⁴²

The welfare of the whole society is drastically affected by such criminal conducts as bribery, price fixing, smuggling and currency offences, etc. It is also a disturbing trend in the modern materialistic society that social status of man is measured by the yard stick of wealth. White-collar criminality has a very close and powerful relationship with the people who control and influence the administration of justice. Daily unearthing of financial rackets of crores of rupees involving top businessmen, politician and bureaucrats corroborate this sprawling anti-social malaise in India.⁴³

Following few glaring examples of scams on record in India before 1995 and in modern time are enough to support this view that economic crimes has become a great threat to the entire economic fabric of the country.

- 1957 -The Mundhra scam
- 1964 -The Kairon case
- 1971 -The Nagarwala episode
- 1982 -The Antulay case of and the Churhat Lotteries case
- 1987 -The Fair Fax case; The Bofors deal case
- 1991 -The Air Bus deal
- 1992 -The Security scam
- 1993 -The A.B. Loco deal
- 1994 -The Sugar scam

These Scams are committed in a series with a gap of a few years.⁴⁴ But after 1995, the unprecedented expansion of white-collar crimes in India bursts upon the nation's conscience and almost every alternative day new scams hit newspaper headlines. Few important scams on record after 1995 are given below which are now sensational topics of hot discussion in India.⁴⁵

- Jain Hawala racket
- The Telecom scandal
- The Fodder scam of Bihar
- Jhankhand Mukti Morcha pay-off case
- Harshad Mehta stock-market corruption case
- St. Kitts \$21 Million forgery case
- Lakhubhai Pathak cheating case
- Plantation scam
- Tax evasion of Rs. 1,56,836 crores
- Textile corruption case
- ONGC corruption (security scam) involving Rs. 680 crores
- Bihar police dress purchase corruption
- Urea purchase corruption of Rs. 133 crores

One of the interesting and notable things about these scams in India is that even after crores of expenditure incurred by the government on their investigation and legal cases, felons remained unpunished in most of the cases or no charge sheet is even filed after years and years. India's most prominent weekly, *India Today*, has undertaken a study of following 14 such major swindles in the fast 15 years that involve Rs. 22,376 crore, 221 cases and 149 charge-sheets but till date there have been just 10 convictions.⁴⁶

⁴² N.V. Paranjape, *Criminology and Penology*, 11th Edition, 2002, pp. 105-106.

⁴³ Gurpal Singh, *White-collar Crimes in India*, Punjab University Law Journal, 1977, p.51.

⁴⁴ *The Times of India*, dated 17.12.1995.

⁴⁵ Ajit Kumar Sahu, 'Lajya', Published in Oriya Journal 'Praharee', dated 21.10.1996.

⁴⁶ *India Today*, March 3, 2003, pp. 34-39.



Corruption in Bureaucracy

Corruption in recent time is wide ranging and almost all the sectors, private or public and departments of government are infected by this virus. Indian judiciary has also taken a serious view regarding offences of corruption committed by public servants. In *Krishan Dayal Vs. State*,⁴⁷ the court outlined the dangers involved in corruption cases committed by public servants and made the following observations:

"A corrupt official is a menace to the society and far from helping in the proper functioning of the government and implementing the laws, brings the government and society at large into disrepute. If such public servants are open to corruption and coerce the public into paying them illegal gratification in the whole structure of the society would be upset and the policy of the government and the legislature, however, beneficial it may be, would generally suffer. A public servant, therefore, once he is found to be guilty of accepting or obtaining illegal gratification, deserves not soft corner or indulgence from the courts of law."

Public servants are the back-bone of any government and through this bureaucratic set-up government implements its policies of social welfare in society. If public servants are corrupt, then government cannot fulfil its constitutional promises and ultimately fails in achieving its goal. Our Supreme Court has taken this cause seriously and indicated its policy, regarding the punishment of white-collar crimes in the context of corruption by public servants. In *Sam Prakash Vs. State of Delhi*,⁴⁸ the Supreme Court observed that severe punishment must be prescribed to root out such social menace. Though all-intensive efforts to track down bigger criminals were needed, the courts could not slow down because bigger criminals were to caught.⁴⁹

In *Suresh Chandra Vs. State of Gujarat*,⁵⁰ the Supreme Court held that in case of an officer accepting bribes, the considerations that he is a petty official caught for a small bribe or that deterrent punishment is not feasible do not warrant a lesser sentence.

It has, however, been experienced that courts in India, not only adopted lenient view in cases of white-collar criminals, but have always considered the various factors to mitigate the punishment to them. And whenever any such factor associated with the offender's sentence existed, they always reduced the punishment as part of their sentencing policy. Cases are not wanting when courts undertook various extenuating factors in sentencing policy of these crimes. For example, sufferings accompanying the conviction or where offence happened to be not illegal gratification but criminal breach of trust committed due to the pressure of influence of superior officers, have been considered as grounds for reduction in punishment.

The loss of membership of the Municipal Board has been accepted as a factor for reduction in punishment.⁵¹ In many cases the loss of the job⁵² consequent to the conviction has been found relevant in reducing the term of imprisonment. So as a part of judicial policy, various factors such as loss of job, mental agony, imprisonment already gone,⁵³ etc., were taken into consideration, over a long period of time. In many cases, courts have been of the view that too lenient as well as too harsh sentences both lose their efficacy. One does not deter and the other may make one a hardened criminal and so they adopted a middle way in sentencing policy of these cases.

Dealing a case under the Prevention of Food Adulteration Act, 1954 the Supreme Court widened the scope of the Act and held that in the absence of any provision, express or necessarily implied from the context, the courts would not be justified in holding that the prohibition was only to apply to the owner of the shop and not to the agent of the owner who sells adulterated food. The Act is a welfare legislation to prevent health hazards by consuming adulterated food. The *mens rea* is not an essential ingredient. It is a social evil and the Act prohibits commission of the offence under the

⁴⁷ (1958), Raj, L.W. 596.

⁴⁸ (1974) 4 SCC, 84; 1974 SCC (Cri) 215.

⁴⁹ Ahmad Siddiqui, Criminology, Problems and Perspectives, 4th Edition, 2001, p.357.

⁵⁰ (1976) 1 SCC 654; 1976 SCC (Cri) 145

⁵¹ *Prem Chand Vs. State*, AIR 1957 All 381.

⁵² *Chakravarti Vs. State of M.P.*, (1976) 1 SCC 281; 1976 SCC (Cri) 246.

⁵³ *Munna Lal Vs. State of U.P.*, AIR 1964 SC 28; (1964) 1 Cri.L.J. 11.



Act. The essential ingredient is sold to the purchaser by the vendor. It is not material to establish the capacity of the person vis-à-vis the owner of the shop to prove his authority to sell the adulterated food exposed for sale in the shop. It is enough for the prosecution to establish that the person who sold the adulterated article of food has sold it to the purchaser.⁵⁴ In *Sarjoo Prasad Vs. The State of U.P.*,⁵⁵ it was contended that a servant who sold food on behalf of his employer was not liable unless it was known that he has done it with knowledge that the food was adulterated. This court held that Sec. 7 of the Act enjoins everyone whether an employer or a servant not to sell adulterated food and anyone who contravenes this provision is punishable under Sec. 16 without proof of *mens rea*.

Court was strict in sentencing offenders found guilty under these types of penal legislations. Court once observed that High Court should not interfere with the quantum of sentence passed by trial court.⁵⁶ The Supreme Court, in *M.H. Hoskot Vs. State of Maharashtra*,⁵⁷ in this context observed, “soft sentencing justice is gross injustice where many innocents are the potential victims.”

The Supreme Court in *R.K. Garg Vs. Union of India*,⁵⁸ upholding the validity of the Special Bearer Bonds (Immunities and Exemption) Act, 1981, observed that the Act was not intended to encourage tax evasion in future and condone such evasion committed in past but the real object of the Act was to launch a nation-wide search to unearth undisclosed wealth by encouraging small incentive to those who declare their undisclosed cash. The main intention was to unearth ‘black money’ so as to prevent further loss of government revenues.

Why White-Collar Criminals Escape Punishment?

The following are the key reasons that clearly indicates white-collar criminals scot-free or goes unpunished:⁵⁹

The effect of white-collar crimes are so diffused over a large number of people that an individual hardly cares to file any report of these crimes.

Law with regard to these crimes is very complex and soft in nature. It is not strict enough to deal with such criminals properly. The civil nature of remedy under most of the laws dealing with white-collar crimes is not a proper deterrence to white-collar offenders, so businessmen feel better to pay fine rather than obeying the law.

Securing evidence for prosecution is very difficult, particularly in cases of crime by corporation.

The olden days legal maxims like doctrine of presumption of innocence, i.e., the guilt of the accused should be proved beyond all reasonable doubts and benefit of doubt should go in favour of the accused, are still helping the white-collar criminals in escaping punishment.

The high social, political and economic status and influence of these criminals help them to make contracts with the administrative and law enforcement authorities. The white-collar criminals get themselves involved in political process of the country, through economic help to various political parties in election, so they easily get their favourable legislation by influencing the policy-making mechanism of the government.

The lack of speedy trial on priority basis in such cases, ultimately brings down the gravity of such offences.

Most of the white-collar crimes are done in such a planned manner and with careful and expert cleverness that they are not easily detected and so frustrate the very purpose of the law.

The codes of conduct and their enforcement regarding various professions and occupations such as lawyers, doctors, engineers, advertisers, architects, etc., are made by their own professional organizations, which represent their own parochial interests. There is, only symbolic enforcement.⁶⁰

⁵⁴ *Sate of Orissa Vs. K.R. Rao*, AIR 1992 SC 240.

⁵⁵ [1961] 3 SCR 324.

⁵⁶ *Delhi Administration Vs. Manohar Lal*, Appeal (Crl.) 863 of 2002 (Del).

⁵⁷ AIR 1978 SC 1548.

⁵⁸ AIR 1981 SC 2138.

⁵⁹ Rohinton Mehta, op. cit., pp. 235-236.

⁶⁰ Rohinton Mehta, op. cit., p. 243.



The class bias of the courts also helps white-collar criminals in escaping from criminal conviction. This is not true about present day courts but also the courts in the past. So the precedents and the procedures formulated in the past were in favour of white-collar criminals as a result of which, there is differential handling of white-collar cases and ordinary crimes.⁶¹

The concept of *laissez-faire* and democracy, up to a great extent, brought about a glorification of 'maximizing profit'. Strict laws are generally treated against the policy of 'free market' and 'promotion of trade'. They are alleged as unnecessary governmental interference in business. It is, thus, rightly said that, 'democracy itself is the greatest enemy of democracy'. The past experience has also shown that prohibitions, bans and strict governmental control pushes underground white-collar criminality, to be controlled by mafia; leading to even greater enforcement problems. Thus, the position of the government is unenviable -strict laws and controls have not worked in the past and total *laissez-faire* is not working at present.⁶²

II. CONCLUSION

The White-Collar Criminal is an intelligent, stable and successful person, commanding authority in his own field. He moves about with the cloak of respectability and status. But in effect, he is a criminal, who by his avarice and greed, where 'much wants more', harms the society and the nation at large to no end. With the growing materialism all round the world, acquisition of more and more wealth has become the final end of human activity. So, such types of deviances are committed by influential persons who are ingenious, clever, rich, greedy and who have high political contact which are enough to resist the efforts of law enforcement against them.

As Mahatma Gandhi rightly remarked: "There is sufficiency in the world for man's need but not for man's greed." Now it is clearly visible on the face of contemporary society, when we talk about privileged class deviance white-collar criminality or socio-economic crimes. At this time, the crime-polluted atmosphere in India are the glaring examples of crimes which have shocked the human conscience.

These privileged class deviances are committed against government or society at large, such deviants are not visualized, these deviants in the garb of gentlemen remain in society like serpents under the green grass. Such deviants always wish to remain in organized form, try to control legislations and even select their favourable ruler, politician, administrator to flourish in their dishonest trade practice.

From the above analysis it can be concluded that because of various causes, white-collar crimes are multiplying each day. A sympathetic attitude or mere persuasion cannot stop the growth of such crimes. Some hard and strict measures are now needed at each level, to deal with these crimes. These crimes are no more a social problem but have become a legal problem and a challenge to the present government.

Hence, a new criminal law is urgently needed to deal with the white-collar criminals. The existing criminal justice system is not up to the mark and so, in view of rapid rise in the magnitude of white-collar crimes, it is now an urgent need to draft a full proof code and to introduce a new justice system to prevent and control white-collar crimes in larger interest of the society. The proof of *men rea* element should not be applied in cases of white-collar crimes. White-collar criminals should be treated like other criminals of lower class and no leniency is needed to be shown to them. The trial of these cases must be made speedy and if necessary, the Special Courts to try these cases must be initiated.

To achieve the desired result in order to prevent and control the white-collar crimes, it has become necessary to review not only the existing legislative provisions but also the scheme relating to their cognizance, investigation, trial and punishment. It is also needed to have specialized agencies with trained and skilled persons for investigation of these crimes and our courts should be trained to deal with these offences.

⁶¹ *Ibid*, p.243.

⁶² *Ibid*.

