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Socio-Legal Analysis of White Collar Crimes in India

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ABSTRACT

White collar crimes have emerged as a major barrier to national development, especially in emerging nations, where its rise can contribute to increasing overall crime rates - an alarming trend for these nations. This research paper seeks to emphasize the gravity of this issue and the need for urgent attention. Criminal activities of this nature are often committed by individuals in positions of power and prestige. Because of their social standing, such people are less likely to be prosecuted, and their financial capabilities often enable them to perpetrate and conceal these crimes.

The Indian government has made remarkable attempts to prevent white collar offences by setting up different legal authorities dedicated to dealing with such offenses. White collar offences can take different types, comprising frauds, blackmail, scams, and similar non violent crimes. Not like usual offences that always involve physical forces and are associated with persons from backward class, white collar crimes are usually intellectual in nature.

In spite of the initiatives taken by the government, these type of crimes remain widespread because of factors like huge population, widespread illiteracy, and inadequate public awareness regarding these offenses. An inclusive analysis of white collar crime discloses a multifaceted interaction of motivation, circumstance, and emotional tendencies behind these activities. This research paper concluded with a highlight of the current legal system identifying white collar crimes and presents key suggestions aimed at preventing and alleviating their incidence.

Keywords: White Collar crimes, Legal system, India

INTRODUCTION

The Industrial Revolution ushered in a period of prosperity and advancement, but it also introduced a host of new issues. One of the most important developments was the coming out of the new types of criminal activities that has since attained concerning proportions. Unlike conventional crimes typically related with aggression or theft, this modern form of wrongdoing is largely perpetrated by persons from the upper and middle classes as part of their professional roles. India has experienced a vital surge in incidents associated to cybercrimes, employee misbehavior, illegitimate profiteering, manipulation of financial records, money laundering, and corrupt practices in the allocation of government contracts. This growing tendency is expected to continue in the prospect. Over the past five years, exploratory endeavors have mainly targeted financial companies like private bank, NBFCs, stock traders and asset management companies. These searches have mainly revolved about financial offences comprising broad ranges of crimes, including credit card frauds, identity theft through phishing, fraudulent KYC practices, corporate malfeasance, and major money laundering activities. Such crimes are usually committed by individuals or collectives who wield considerable influence and authority. It is their elevated social status that frequently enables and facilitates these criminal acts.¹ White collar crimes are steadily on the rise, driven by different factors like unchecked greed, widespread public ignorance, the absence of stringent laws, weak enforcement mechanisms, lack of personal and institutional accountability, peer encouragement, and significant loopholes in the legal system. The rapid growth of technology and industrialization has also contributed to the proliferation of these offenses. Scientific and technological advancements, though beneficial in many ways, have inadvertently facilitated new forms of white collar crime.²

Contrasting conventional crimes, white collar offenses often result in harm that is not immediately visible but is nonetheless substantial. These crimes are surrounded by ethical ambiguities and a lack of clarity, making them distinct from more overt criminal acts. Recognizing victims is often challenging because they might not even recognize they have been targeted or harmed. It is widely acknowledged that certain professions provide ample opportunities for unethical conduct and illicit activities, which typically go unnoticed by the general public. Unscrupulous individuals can be found in the business world, various professional fields, and even within public institutions.³

India has several laws aimed at addressing white collar crimes, including the IPC, the Prevention of Corruption Act, 1988, and PLMA Act, 2002. The IPC includes provisions for fraud, criminal breach of trust, and cheating, which are commonly used to prosecute white collar criminals. In spite of these

¹ Nagarajan, Khaja Sheriff, White Collar Crime In India, IJSS&I (2012)

² SMA Qadri, Ahmad Siddique's Criminology, Penology & Victimology (Eastern Book Company, , 2016)

³ Manju Koolwal, White Collar Crimes (Kamal Publisher, New Delhi, 2015).

existing legal systems, enforcement remains a challenge, and many white collar criminals evade justice because of legal loopholes, inadequate investigation mechanisms, and delayed judicial processes.

Statement of the Problem

In India, different laws have been enacted to deal with white collar offences, but challenges persist in effectively tackling these offenses. The IPC offers provisions for crimes like frauds, cheating, and criminal breach of trust, which are frequently linked to white collar offenses. The problems lie in the enforcement and execution of these laws, as white collar criminals often utilize sophisticated methods to conceal their illegal activities. The slow pace of the judicial process, along with the lack of specialized training for law enforcement agencies, makes it harder to examine and prosecute these crimes efficiently. In addition, the high social status and influential positions of many white collar criminals lead to the opportunity of legal loopholes being exploited, resulting in delayed or reduced sentences. This makes a sense of impunity among offenders, and the victims, often businesses or the general public, suffer long term financial and communal consequences. As a result, the focused approaches to strengthening enforcement mechanism, closing legal gaps, and guaranteeing swift justice is vital in combating the increasing threat of white collar crime in India.

Literature REVIEW

Sanjay Soanki (2023)⁴ illustrated that white collar offences typically take place within large and multifaceted enterprises, done by persons who possess advanced knowledge in fields like finance, management, engineering, medicine, organizational theory, and information technology. The consequences of these crimes are always concrete and considerable. These type of criminals are involved in wide ranges of illegal activities like false recruitment, black market dealing, medicinal frauds, tax evasions, cybercrimes, and credit card frauds, etc.

Nagarajan and Khaja (2012)⁵ in their research article aimed to give the broad perceptive of the reasons behind criminal activities. Accordingly, even small time offenders are more and more becoming comprised in white collar criminal activities. In India, the occurrence of these kind of criminal activities are growing quickly across every aspect of civilization. The major spotlight of the research is to describe types of white collar crimes, and recommend probable solutions to make out and eliminate this rising issue.

Moin Aftab and Irshad (2024)⁶ aimed to explore the prevalence of white collar crime in India and the resulting effect on the financial system and society. Through an inclusive conceptual review and data analysis, the study seeks to understand the factors contributing to the rise of white collar crimes, its effect on India's economy, and its broader societal consequences.

Singhania, Aarav (2024)⁷ pointed out that white collar crimes present the foremost barriers to both the monetary and societal structure of India, including nonviolent economic felonies done by persons or corporations in positions of faith and power. This research paper offers an indepth study of white collar crime recognition in India, highlighting the common types of offenses, the strategies utilized for detection, and the complex barriers confronted by legal bodies.

Research objectives

- To examine and analyze the existing legal systems in India aimed at addressing white collar crimes
- To identify the important factors contributing to the rise of white collar crimes in India
- To identify the challenges faced by law enforcement agencies in investigating and prosecuting white collar crimes

Types of White Collar Crimes in India

Bank frauds are common type of deceitful activity aimed at illicitly gaining monetary advantage, typically perpetrated against financial institutions

Bribery stands as a widespread form of white collar crime, wherein individuals offer money or other incentives to persons in positions of authority in exchange for favors. Essentially, bribery involves one party providing financial benefits to another to either prompt them to act in a certain way or dissuade them from taking certain actions. It's a common means of compensation for many elected officials in our nation. The Indian Penal Code of 1860 stipulates punishment for bribery under Section 171E, which states that offenders may face imprisonment for up to one year, a fine, or both. head, being engaged in by public officials.

Insider trading is considered as a major kind of white collar crimes in which people exploit confidential, non public data to trade stocks for individual monetary advantage. This frequently includes corporate executives utilizing privileged knowledge related their firm's financial position to purchase or sell stocks, thus to secure personal gains.

⁴ Sanjay Soanki, A Critical Study on White collar Crimes in India, IJBB (2017)

⁵ Nagarajan and Sheriff, White Collar Crimes In India, IJSSI, 2012

⁶ Moin Aftab and Irshad, Understanding The Underbelly, 2-26 JHSS (2024)

⁷ Singhania, Aarav. White collar crime identification in India, IJL (2024)

In India, cybercrime has emerged as a leading cause of various forms of criminal activity, representing a prevalent issue in the digital realm. Cybercrime encompasses illicit activities conducted through computer networks, exploiting the rapid advancements in technology. The Information Technology Act of 2000⁸ is the sole legislation addressing offenses associated with cybercrime. None of the acts or laws offer an exact definition of cybercrime, given the complexity of crimes involving computers and the internet.

Money Laundering: It includes criminal concealing the factual identities and source of illegally got fund, in addition to the location where they acquired them. The basic purpose of the crimes are to legitimize wealth obtained throughout unlawful means by making it emerge to come from legalized source. The owner of the money gets the money through some illicit means and somehow deposits it into the bank;

- a) The transactions of cash is then achieved by a number of transactions;
- b) As a final point, so as to make it official, they refund the money to the banking institutions.
- c) "In India, the term "Hawala transaction" denotes to the prohibited activities of money laundering and it is described in Section 3.⁹

Legal Systems Addressing White collar Crime in India

Indian Companies Act, 2013

The Companies Act of 2013 plays a pivotal role in upholding this vision. It grants various rights to investors and oversees corporate conduct to ensure that companies operate efficiently. The purpose is to protect investor interests and ensure they receive appropriate returns on their investments. Though investors are the true proprietors of a company, the actual control and management are exercised by the Board of Directors. However, this delegation of authority can sometimes be misused. There is a risk that certain directors may exploit their positions, engaging in fraudulent practices.

The interplay between corporate governance and ethics is significant, yet inevitable conflicts may arise between the two. Corporate fraud has emerged as a particularly severe and sophisticated form of corruption within the business environment. These white collar offenses are often hard to detect and prevent, posing serious challenges to transparency and accountability. Such fraudulent activities not only deter potential investors but also erode public confidence in both the corporate sector and the government. To address these concerns, the Companies Act empowers the Central Government to probe into corporate operations, especially when allegations of fraud arise or when there is evidence suggesting that the rights of minority shareholders are being suppressed.

Fugitive Economic Offenders Act, 2018

This Act was enacted with the objective of restraining the growing trend of monetary offenders evading trial by fleeing the state. The prime purpose is to prevent such people from absconding, and to ease their return to India for confronting legal proceedings. It lays down a legal mechanism to declare a person as a FEO. Once this declaration is made by a competent court, authorities are empowered to seize and confiscate both the offender's asset and any properties suspected to be connected to the proceeds of crime, in spite of whether they are located in India or overseas.

Also, Section 5(2) has drawn criticism to determine the rule of usual justice, exclusively the presumption of innocence until proven culpable. Also, if a person is declared a fugitive economic offender and does not return within ninety days, the Act allows the designated authorities to eternally take away and set out of their properties.

Prevention of Money Laundering Act, 2002

Section 3 (PMLA) denotes the offence of money laundering as any act where a person attempts to engage in, knowingly assists with, knowingly becomes a party to, or is actually involved in any process or activity related to the proceeds of crime, including the act of presenting those proceeds as if they are clean or legitimate ("untainted") property. Anyone involved in such actions is held accountable under the law.

The offences of money laundering is punishable with thorough imprisonment for a minimum term of three years, which may be extended upto 7 years. However, if the proceeds of crime are linked to offences mentioned in para 2 of Part A of the Schedule to the Act, the maximum punishment can be extended to ten years instead of the usual seven. This means that any individual found guilty of involving in money laundering activities is liable to face strict imprisonment, with the severity of the punishment increasing depending on the nature of the underlying offence.¹⁰

The "Benami Transactions (Prohibition) Act", 1988

It was brought in in 1988 with the object of prohibiting Benami transaction, allowing for the recovery of properties apprehended under such arrangements, and incidental matters. As per Section 2(a):

"The transactions in which a property is transferred to one person, though the payment or consideration for the property is made by another."

Section 3 firmly forbids people from entering into any Benami transaction. Also, the Act provides that any property acquired via Benami transactions are liable to be confiscated by the competent authority, and no recompense is needed to be paid for such confiscation.

⁸ Information Technology Act, 2000, No. 21, Acts of Parliament, 2000 (India).

⁹ Prevention of Money Laundering Act, 2002, No. 15, Acts of Parliament, 2003 (India).

¹⁰ Praveen Kumar, "Money Laundering in India: Concepts, Effects and Legislation", IJR, Vol. 3, Jul 2019

JUDICIAL APPROACH

Rana Ayyub v. Enforcement Directorate¹¹ case, persons are deemed responsible of doing the offence of money laundering if they: (i) attempt to appoint (ii) deliberately assist in the process; (iii) consciously become involved; or (iv) are dynamically involved in any practice or activities that is associated with the proceeds of offense. It comprises actions like hide, possess, acquire, utilize, or presenting these illicit proceeds as though they are legitimate and clean assets. In this case, the requester argued that, along with Section 44(1) of the PMLA, money laundering offences ought to be tried only by Special Court that has jurisdiction over the region where the offense really occurred.

In the case of Anoop Bartaria v. ED¹², Court considered whether accused persons information of dealing with the "proceeds of crime" is an essential situation for filing a complaint as per PMLA. The petitioners have pointed out that, as per Sections 3 & 4, persons can only be accused with money laundering if they are found to have intentionally or actually participated in activities involving such proceeds. They contended that in the lack of this knowledge, no criminal activities in PMLA could officially be set up against them.

Conclusion

The legal system of India against white collar crimes have evolved significantly over the decades to address the complex and sophisticated nature of economic offenses. With increasing globalization and digitization, white collar crimes like fraud, money laundering, insider trading, cybercrimes, and corporate scams have become more prevalent and intricate. To counter this, India has developed a multi-layered legal system encompassing a range of laws like IPC, Companies Act, Prevention PMLA, and IT Act. These laws collectively form the backbone of the nation's effort to detect, investigate, prosecute, and penalized offenders involved in white collar crimes.

One of the key strengths of India's legal system is its proactive approach towards prevention and enforcement. Agencies like CBI, ED, SEBI, and the SFIO play a crucial task to monitor, investigate, and prosecute monetary offenses. The introduction of severe provisions, enhanced penalties, and the establishment of special courts have further strengthened the enforcement mechanism, making it more efficient and responsive to the challenges posed by white collar crimes.

Also, to strengthen international assistance for cross-border investigations is essential given the globalized nature of these crimes. Establish more special courts dedicated exclusively to white collar crimes and ensure speedy trials by reducing procedural bottlenecks, so that offenders face timely justice and deterrence is enhanced.

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¹¹ (2023) 4 SCC 357

¹² 2023 SCC 477