

WHITE-COLLAR CRIMES AND ITS EXTENSIVE COPIOUS CLASSIFICATIONS IN INDIA

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ABSTRACT

‘You, the upper social classes, you are educated, advanced, disciplined, cultured and the most elites, the first rib of the country, your vision for this nation, “rustica et urbana”¹, is counted to the next grade, just the same you be computed the sole executor & perpetrator of premier class crimes, hindering people, their private entities, corroborating thyself a “hostis humani generis.”²’ Concocting emotions of nation and nationalism amongst the people of certain place with an objective of hope and desire of connecting the community with the society, it is the fidelity of the populace, which, particularly proclaims & pronounces the population of the nation to scream and cry out the passion for patriotism and nationalism, concealing and burying the truth & secret of the business classes, the government professionals, in a nut shell, is a hideous crime which conventionally, “effectus sequitor causam.”³ Leadership and management, the two most necessary platform of the nation, where the nation must apprehend and trust and should not be misguided for the incognizant blind atrocities wherein the citizens of the republic getting flood by their ignorant work wave, agonizing, with the crimes of high stature. Comprehending to discern, even so unconscious of the fact regarding crimes regulated by the reputed rank, often known as “white-collar crimes,” a “socio-economic crime,” which affects with misdemeanor, transgressing the society by effecting the distress economy of the country, exposing the employees, callous customers, and absent-minded affected person. India, making itself a free sovereign, republic nation significantly adopting the Constitution, regardless of the utterances, hardly able to facilitate, abundant stringent legislations, that could have penalized up the high social ghosts for performing their pretentious malfeasance out of greed, avarice, and villainy. Be that as it may, “vigilantibus non dormantibus jura subveniunt”⁴ and not a somnolent society.

¹ A legal maxim which means rural and urban.

² A legal maxim which means an enemy of the human race.

³ A legal maxim which means the effect flow the cause.

⁴ A legal maxim which means law protects those who are vigilant and not sleepy.

THE CHRONOLOGICAL HISTORY OF WHITE-COLLAR CRIMES

Albert Morris, a criminologist in 1934 highlighted & drew attention to the urgency of a switch in the prominence concerning crime which he added that as “anti-social activities of persons of high status committed in course of their profession”⁵ should be brought within the ambit of crime and must be made punishable, if someone dares to commit it.

The expression, white-collar crime has been elucidated by the 20th Century American Criminologist, and Sociologist, Prof. Edwin Hardin Sutherland, hereinafter Sutherland, in the year, 1939 for the first time calling it, the attention to the crimes by persons “in the upper or white-collar class, composed of respectable or at least respected business and professional men”,⁶ and contrasted these offenders and offenses with those concentrated mainly in the lower classes. Later, in a systematic study of crimes by corporations, Sutherland offered a formal definition⁷ of “white-collar crime” as aforesaid term as “a crime committed by a person of high social status and respectability in the course of his occupation”⁸ He used the phrase to describe the types of crimes, usually, committed by “persons of respectability”⁹ person who are identified as possessing a high social stature. Before Sutherland’s defined notion of “white-collar crime”, the upper classes in the society thought to be largely incapable of going in for such criminal actions, where such a dependency was highly ingrained publicly. Prior to Sutherland’s explanation of the phrase, “white-collar crime,” during 15th Century, in England, the very well known high class stature case and first ever “white-collar crime” case of 1473, Carrier’s Case,¹⁰ wherein the agent who had been endowed to transport wool attempted to steal some of it for himself, meanwhile, for such known case, the doctrine of the “breaking bulk”¹¹ was being adopted by the Star Chamber

⁵ Kasuta Manas, Historical Background (white-collar crime), Concept of white-Collar Crime (15th July, 2021, 8:00 AM), <http://www.legalserviceindia.com/legal/article-1028-concept-of-white-collar-crime.html>

⁶ Sutherland, Edwin H. 1940. The White-collar criminal. *American Sociological Review* 5:1–12. Page 1.

⁷ Sally S. Simpson, Introductory Works, White- Collar Crime (15th July, 2021, 09:02 AM), <https://www.oxfordbibliographies.com/view/document/obo-9780195396607/obo-9780195396607-0020.xml>

⁸ Sutherland, Edwin H. 1949. White collar crime. New York: Dryden, Page 9.

⁹ What is a White-Collar Crime? (15th July 2021, 09:04 AM), <https://corporatefinanceinstitute.com/resources/knowledge/finance/white-collar-crime/>

¹⁰ (Anonymous v. The Sheriff of London, The Case of Carrier Who Broke Bulk) (1473), Carrier’s Case (15th July, 2021, 09:05 AM), https://en.wikipedia.org/wiki/Carrier%27s_Case

¹¹ Breaking-Bulk Doctrine Law and Legal Definition (15th July, 2021, 09:06 AM), <https://definitions.uslegal.com/b/breaking-bulk-doctrine/>

and Exchequer Chamber of the English Court of Law. Since time immemorial, there were many other professors and jurists who defined the term, “white-collar crime.”

DEFINITION OF THE TERM, “WHITE-COLLAR CRIME” BY THE OTHER PROFESSORS AROUND THE WORLD

- a) Paul Wilbur Tappan, a Professor of Law and Criminology in the University of California, Berkeley coined the phrase, “white-collar crime” by adding “White-collar crime is a special type of solitary professional criminality. It involves real violation of criminal law systematically or repeated by business, professional and clerical works in addition to their occupation.”
- b) Sir Walter Reckless, an American criminologist who stated, “White-collar crime represents the offences of businessmen who are in position to determine the policies and activities of business.”
- c) Marshall Barron Clinard, a Professor Emeritus of Sociology at the University of Wisconsin-Madison, said, “A violation of the law committed primarily by groups such as businessmen, professional men, and professional men and politicians in connection with their occupations.”

WHAT IS WHITE-COLLAR CRIME ON THE INDIAN HORIZON?

Grasping the root reason of white collar crime, since how it emerged in India, we have to lay an emphasis due understanding in our history which is an undeniable truth that execution of crime that was raised dramatically ever since mankind began to live together. However, some few types of crime are now deemed to be old while with the shifting dynamic of our everyday lives, in many new structures of crime continue to take reshape in the aberrant corners of concerns of the society. The notion of white-collar crime is definitely not a new appearance in the recent circumstance even so have numerous references to such crimes since the Vedic period in India's ancient and medieval literature. Manu who is often accorded the title of being India's great law-giver, held the view it was age when “dharma” prevailed in perfection

but later “adharna” progressed gradually which naturally gave way to tendencies such as robbery, wrongdoing and fraud.¹²

Evidently, Dr. S. Radhakrishnan, the former President of India, defined the term, “white-collar crime” as “The practitioners of evil, hoarders, the profiteers, the black marketers, and speculators are the worst enemy of our society. They have to be dealt with sternly. However well placed important and influential they maybe, if we acquiesce in wrongdoing, people will lose faith in us.”

India, after independence, in the case of Life Insurance Corporation vs Hari Das Mundhra, (1962) was the first white-collar crime case filed in the Indian Territory where Justice Chagla stated that the Mundra sold imaginary shares to the Life Insurance Corporation defrauding of Rs. 1.26 crores but sentenced to 22 years in prison. The “Santhanam Committee Report” was the first Committee set up in 1962 which showed a picture of white-collar crime is a crime perpetrated by the people of higher social class. Recent judgement given by the “Santhanam Committee” is in the case of T. S. R. Subramanian & Ors vs Union of India & Ors. (2013).¹³

The Business Standard¹⁴ on 22nd November, 2016 published a report titled as “The changing dynamics of white collar crime in India” stating that in the last 10 years, the Central Bureau of Investigation (CBI) has found a total no of 6,533 cases of corruption out of which 517 no. of cases were registered in the past two years.¹⁵

TYPES OF WHITE-COLLAR CRIMES IN INDIA

The various kinds and colors of white-collar crime s occur firstly, in the medical profession,

¹² Kaviraj Singh, Vinkashi Kadan, Babita Sharma, Bhawna Gandhi, Indian National Bar Association, Emergence of White-Collar Crimes in India, White Collar Crime Survey (15th July, 2021, 09:08 AM), <https://www.indianbarassociation.org/wp-content/uploads/2020/01/White-Collar-Crime-Survey-2019.pdf>

¹³ T.S.R.Subramanian & Ors vs Union Of India & Ors. (2013) W. P. (C) No. 82 of 2011 D. No. 4750-2011 (15th July, 2021, 09:09 AM), <https://indiankanoon.org/docfragment/183945465/?formInput=%22Santhanam%20Committee%22>

¹⁴Ishan Bakshi, The changing dynamics of white-collar crimes in India (15th July, 2021, 09:10 AM), https://www.business-standard.com/article/markets/the-changing-dynamics-of-white-collar-crimes-in-india-116102200032_1.html

¹⁵ Subodh Asthana, White collar crime in India, White Collar Crimes in India (17th July, 2021, 09:11 AM), <https://blog.ipleaders.in/white-collar-crimes/>

secondly, in the legal profession, thirdly, in the education sectors, corporate sectors, engineering and society “en bloc”¹⁶.

The numerous or several types of “white-collar crime” in India includes in seriatim-

CYBER CRIME, A WHITE-COLLAR CRIME IN INDIA

A cyber crime is a crime which is perpetrated through internet in an online mode by using a computer or a phone or with any electronic communicating device to commit white-collar crime.

a) Cyber Stalking

Stalking someone’s personal details or private accounts and profiles through any computer or a phone or any electronic communicating device to commit white-collar crime , entering into that person’s entity and knowing the information which one should not have known. Facebook, Instagram et cetera are the applications or android software(s) through which cyber stalking has become not a difficult hurdle to conquer. These are the places or spaces where the offenders stalk other’s profile and personal details with a thumb gap distance. Nonetheless the cyber stalking cases are rising, people, compared to that threat, are less aware of the situation, become casual, and fall into cyber stalking traps very quickly. The security personnel of our country and the state, uses this situation and ask for bribery to lodge a complaint regarding this offence. Hence, in no ways people could get help if initially, people get stalked online, lose his morality and prestige. There have been more cases of cyber stalking that has been recorded as the COVID 19 pandemic limited people in their homes and in their jobs, leaving them jobless and hungry.

b) Cyber Terrorism

Mark M. Pollitt, defined the term, ”cyber terrorism” as “the premeditated, politically motivated attack against information, computer systems, computer programs, and data which results in violence against non-combatant targets by sub national groups or clandestine agents” is believed one of the major concerns of the white-collar crime in India. Violence, hatred towards any particular religious community have increased as the digitalization and “Digital India” have created that loophole and convenience with which spreading hatred, violence and riots have become a minute far occurrence in any place. Government, even stays

¹⁶ The word quoted and referred above means as a whole.

not far to impose sedition charges upon them, whoever takes the burden, to share posts of violence and create a chaos. In order to prove one's concept of thoughts, cause an offence of cyber terrorism attacking the mass through online, should be punishable and recognized as a white-collar crime.

c) Copyright Infringement

In this type of white-collar crime, the offender uses some person's previously acquired copyrighted product and use it in as one's own or self made item. This crime is the crime, reportedly increasing nowadays. It is a heinous crime, if someone, without having prior consent, copies a trademark or copyright, which has been already, permitted to someone's own, is punishable under The Copyright Act, 1957 following The Copyright Rules, 2013 in the territory of India. If some acquires copyright, it means that person has a material which is solely and genuinely made by him or her, now if that copyright is copied, the person or people whoever would do so, would be held to have committed an offence of copyright infringement which is a crime considered to be a type of white-collar crime in India.

d) Hacking

In this specific crime, a professional hacker, or the offender through his or her skills, hacks or thefts others personal details or bank details or social communicating profiles, emails, gaming accounts et cetera without letting the person know from whom the information is hacked, and is being used or made to use for other illegal or cyber terrorism purposes. It's a very popular crime framed under as white-collar crime in India. Hacking is a type of cyber crime and the offender or the hacker is punished under The Information Technology Act, 2000. However, the hackers are even put to use under government security departments to hack the confidential accounts of people whose implication of illegal offences or actions could bring a threat to the nation and to the people of nation, basis on that hacking, information is collected and assumed so as to eradicate any future illegal actions or steps unless that could have proved a danger to the humankind. Revolution of technology, its methods to run the society, materials which could not keep confidential identities, separate, aloof, is a curse upon the society as well as to mankind. Again this COVID 19 pandemic has just out bound everyone and everything, which is why, crime such as hacking of private account or profiles, have increased throughout our society publicly.

e) Child Pornography

Considering the pornography not a favorable thing to share and surf in the internet, the government of India decided not to put the pornography, its web pages and web sites on the Google Search Engine, concurrently, banned some of the porn web sites from being accessed by the normal people and children. However, the pornography, the industry turned every stone and still trying to make the similar porn web pages and web sites with different hyperlinks in order to continue their spread out of pornography to every nook and corner of the world. The Government of India, hardly looking into the matter which is not suitable to the children, and being casual, the offence of child pornography is just getting higher with each and every day. The parents have to look into the matter and try not to provide the internet availability more to their children except for education purposes. The COVID 19 pandemic has almost shut everything which has uplifted the scope of using the mobile phones and the internet much higher than the mankind have ever expected. Therefore, showing pornography, to the children, is a type of white-collar crime in India. But unfortunately, no specific legislations have been passed to omit such wrong.

f) Sending obscene sharing of any message, image or clips to any girl or any woman

Sending messages, pictures or video clips attaching someone's body organs or body parts to any girl or to any woman is an offence and misdemeanor towards that person's own morality, personality and character in order to blackmail or harass, should be spared and must be punished severely. This wrong is done through online mode through the social networking sites. A person whoever commits or send any obscene messages or images or videos which it is not permitted to show publicly or which would create difficulty to girls or women upon sharing such misdeed socially, should be stopped and must be punishable. The cyber security personnel have to keep a constant vigil upon the sharer of such unusual alternatives to any girl or woman.

BRIBERY, A TYPE OF WHITE-COLLAR CRIME IN INDIA

Bribery, in every department of offices, institutions, schools, colleges, banks, hospitals et cetera could be seen taking place, occurring as the Government is solely responsible for such kind of transgression. Wherever, it is, however it is, no one is spared by such kind of offence, which is recognized as the white-collar crime. May one goes to take admission in a college or

may another need to get admitted in hospitals, bribery needs to be accessed, in every nook and corner of life, mankind have ever expected. The “middle-men raj” is the most dangerous and very rising issue which the Government must stop, for which the poor people of our country, are under tremendous distress and under tension, the reasons, for they have not enough resources to spend behind these intolerable “middle-men raj” and “shameless system of bribery.” Such type of offence is found to be an offence under the Indian Penal Code, 1860 and punishable under section 171E of the Indian Penal Code, 1860.

In the case of Satya Narayan Sharma vs. State of Rajasthan,¹⁷ the Supreme Court of India was of the view that in cases where public servants were being accused of any act of corruption under the provisions of the Prevention of Corruption Act 1988, the same would not be stayed by any order passed under the code of Criminal Procedure Code, 1973, proper adjudication and investigation of the act should be carried out in conformity to the provision of the Prevention of corruption Act.¹⁸

a) Bribing the Bank Officers

Paying bribery to the Bank Officers to allow the offenders for swift transaction of money in lieu of payment of the full bank loan which they the borrower have borrowed setting the bank officers to fix it mutually and depositing money to the bank accounts over to the normal norms without following any regulations is another example of white-collar crime. The banks let others lend money for their private amusement, always leaves a nasty decline, when the time comes, the borrowers to return the borrowed money. The Government of India, hardly taking any steps, introducing any safeguards to limit or stop this crime to be occurring. Whenever a borrower becomes a defaulter in the mode of paying the lone to the bank or want to be a defaulter, pretentiously, an adjustment communication takes place between the Manager of the Bank and the borrow, attaching some percentage of bribery so as not to pay the full loan amount to the bank, which is an offence and the offender must not be spared from the misdeed.

¹⁷ Satya Narayan Sharma vs State of Rajasthan, AIR 2001 SC 2856.

¹⁸ Nancy Garg, Bribery, White Collar Crime (18th July, 2021, 10:00 AM), <https://taxguru.in/company-law/white-collar-crime.html>

b) Bribery is made to the officers of the Government Department

This is a crime where the government officers are given bribery by the offenders to bring out any pension book or any kind of work or any kind of benefit from the government sectors, for the swift transaction and completion of the work, simultaneously they are also given money to allow the offenders to get a government job. Why do we have to bribe behind and before the Government Department? It is a crime and should be punished, under section 171E of the Indian Penal Code, 1860. The departments of Government sectors are as lazy compared to their salary that is given to them, moreover, none movements could be seen possible without supplying bribery to the Government Officers, which is a crime, and it should be stopped unless the poor people, who still lie below the poverty line, would suffer the most. The Indian Government is solely responsible for such misdemeanor, and transgression, will continue to gasp and inhale the hard working paid salary behind bribery. Nowadays, people have stopped working in their respective departments, but getting salary with bonus, due to this COVID 19 pandemic, bribery is proved to be the ultimate fuel for their move.

FRAUD IN BANK, A TYPE OF WHITE-COLLAR CRIME IN INDIA

Fraud in Banks have been recorded as the most occurred white-collar crime in India, where the bank officials get involved, the transaction happens through the connection with the money launderers, and thieves, its only with the help of the bank officials that the bank fraud could become possible, persons, professionals sitting inside four walled room, paralyzing people and nation. The Indian Government sitting numb, instead of catching the offenders, launching new programs, not clearing the previous wrong enabling the offenders to think for another transgression, should be punished under section 406 of the India Penal Code, 1860, with imprisonment extending to three years or fine or both.

In the case of Sahara vs SEBI,¹⁹ when this particular case involved the fact of providing misleading information within the prospectus of the company based on which large numbers of complaints were being raised before the Supreme Court by the investors basing on the

¹⁹Sahara Vs. SEBI, (2012) 10 SCC 603.

factual circumstances and the claims made by the investors the court ordered the company to refund for almost Rs.5120 Crores.²⁰

Categorization of Bank Frauds, are in seriatim:-

a) Making use of internet to Bank Fraud

Internet has been proving the chief mode of committing crimes in the society, as it is difficult to catch the offenders, committing the offence, sometimes, by one's own mistake, money is transferred to another's account, unwillingly. Through internet by the OTP or One Time Password sharing, one could transfer money to one's own account, by the mode of hacking their mobile screen messages or debit cards passwords or credit card passwords et cetera. Making use of internet for fraudulent activities with bank and banking details is a white-collar crime and should be punished under section 406 of the Indian Penal Code, 1860.

b) Approved false bank notes: Giving to People

The illegal bank notes by the smugglers and illegal money suppliers print fake bank notes by laundering and release those notes to the market for making huge profit of money, and counterfeiting currency notes or bank notes, should be punished under section 489A of the Indian Penal Code, 1860 with an imprisonment for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

c) Cheque Defrauding

None could have ever thought that defrauding of cheque, is ever possible, but people have suffered due to the occurrence of such offence by the offenders, often recognized as a white-collar crime, should be punished under section 138 of the Negotiable Instruments Act, 1881.

d) Check Bouncing

Cheque Bouncing is one of such kind of a white collar crime where a person gives or issues a cheque to another one, however it is found that no money or funds are there in the bank account, the cheque becomes invalid for the time being, but if someone does not fill up his bank account or add money to the bank account, such offence must be not be spared and

²⁰ Nancy Garg, Bank Fraud, White Collar Crime (18th July, 2021, 10:02 AM), <https://taxguru.in/company-law/white-collar-crime.html>

should be punished under section 138 of the Negotiable Instrument Act, 1881 with an imprisonment up to two years or with monetary penalty or with both.

e) Bank Deposits: Over Regular Normal Norm

If someone makes some bank deposit, becomes over than the normal banking deposits and comes under the tax payable to the bank for the excess deposit than the usual, is not paying the tax for such unusual banking deposits, must be held liable and punishment should be given to the offender. For the reason the bank have initiated new norms where people could only have and save their banking deposits, limiting to a certain specific amount, if the amount of deposits flows over, one will become an offender, needs to follow further fine. Restrictions have been made to restrict the offender, sometimes observed that the offender is not paying heed to pay the taxes and fine to the bank, in that case measures are taken not to cross the further line again, is however recognized as white-collar crime.

f) Fake Representations

No fake or false representation is allowed to the bank, for that, measures are taken, not to let anyone make false representations, even so, it is found that offenders escaped, committing fake representations, performing forgery in lieu of a small token of bribery to the bank officials in the departments, is considered one of the kind of white-collar crime, the offender should be punished under section 465 of the Indian Penal Code, 1860 with an imprisonment for a term which may extend to 2 years or fine or both.

EXTORTION, A TYPE OF WHITE-COLLAR CRIME IN INDIA

Section 383 of the Indian Penal Code, 1860 states the term, “Extortion” as when one party coerces another party for payment of money, or property or services, he is said to have committed the white-collar crime of extortion. For example- If an officer may use his official right and make use of his higher stature in the company to threaten another person for giving money, or transferring property, or for providing services. None should impose his upper hand right or force to push others to commit or perform an action or any kind of menacing communication, should be punishable and whoever uses such right, must be suspended from his job and from such misused right. Extortion is expressed, in varied platforms, which allows power and right to create and merge violence and originate a chaos. The power is

given so as to make it use for the welfare of the society, and for committing such crime of extortion. The COVID 19 pandemic has imbibed people from their employments, and made homeless and beggar which is again could be recorded a reason for the rapid increase of the case of extortion in the Indian society, but it should happen and it should be looked after by the Indian Government.

FORGERY, A TYPE OF WHITE COLLAR CRIME IN INDIA

Section 464 of the Indian Penal Code, 1860, related the term, “Forgery” with fraudulent and dishonest activities which explained that counterfeiting of checks or securities with the pretention of defrauding the other person. For instance: it is very common in the accounting section of the company where the clerks or the staffs make false records and run away with company’s money thereby causing loss to that company. Defrauding of bank cheques, banking details, have been a very usual course of doing fraud with the digitalization of society et al along with less security and old security guidance as a line of defense, would certainly, have increased the offence of forgery, in order to make swift and convenient society. The community as, a whole, have be more aware of the crime that is occurring with each second hardly passing and beware of the negligence on their behalf. Restrictions and more upgraded guidelines are to be imposed against the offence of forgery and hardcore punishments is to be applied to the offenders, who would dare to commit such crime. Such crime should be declared as a threat to human. Meanwhile, during this COVID 19 pandemic period, such crime has enumerated more with the helpless move and paralyzing situation.

FOOD AND DRUG ADULTERATION: A TYPE OF WHITE-COLLAR CRIME IN INDIA

One of the major prevailing natures of the white-collar crime of which the current Indian society is a victim is the act making adulterated foods and drugs to be sold to the general public thereby causing large amount of damages to health basing upon the recent report that has been submitted by the Ministry of Health of the Government of India which has been demonstrated that approximately seventy percent of the food and other edible food stuffs are being adulterated in nature and has the potential of causing health risks and damages to the

general public. Such crime has been recognized under white-collar crime. Whoever, finds to have committed, food adulteration should suffer punishment under section 16 (ii) of The Prevention of Food Adulteration Act, 1954. Section 272 of the Indian Penal Code, 1860 states adulteration of foodstuffs or drinks intended for sale by the food sellers, pretentiously, intending to profit, where, whoever adulterates any article of food stuffs or drinks, so as to make such article noxious as food or drink, intending to sell such article as food or drink, or knowing it to be likely that the same will be sold as food or drink, and intends rigorously to harm the health of common people, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

HOARDING AND BLACK MARKETING: A TYPE OF WHITE-COLLAR CRIME IN INDIA

Black Marketing and Hoarding is not an age old method to fool people and earn huge profit through the business, here in such crime, huge money transaction takes place with illegal goods and products and with other things. For achieving huge amounts of profits within the business structure activities like hoarding and black marketing are being carried out of the essential commodities that has in recent years increased in India. In order to control such illegal practices the government has initiated specific legislations and regulations such as in the case of Trade Restrictive Practices (Amendment) Act 1992, The Consumer Protection Act 1986, with stringent punishment measures for violators of its provisions and the other offenders.²¹ Currency Exchange offices could be computed as one of the chief place of black marketing. The customs which stop black marketers and black market products in the national borders, found to be restored illegal goods, which don't have license to be accessible in the normal market, is a crime or offence recognized under the white-collar crime. The border passing have been stopped by the Indian Government due to the recent COVID 19 pandemic, somewhat to an extent, black marketing business, was quite been held, but if is to be stopped, the Indian Government have to take and upgrade its security systems and border security forces, unless they want stay refrained from bribery.

²¹ Nancy Garg, [Hoarding and black marketing](https://taxguru.in/company-law/white-collar-crime.html), White Collar Crime (18th July, 2021, 10:06 AM), <https://taxguru.in/company-law/white-collar-crime.html>

EVASION OF TAX, A TYPE OF WHITE-COLLAR CRIME IN INDIA

The business classes, the Government Professionals, the upper class social status holders could be recognized, are the offenders of tax evasion, as per to them, in lieu of payment of high taxes to the Government, they should run their money in another profit zone, share markets, businesses, buying transportation so as the return comes greater than the payment of taxes to the Government. Such offenders must be punished for not paying the tax and for pretentious evasion of tax under section 276(C) (1) of the Income Tax Act, 1995. It is the duty and responsibility of a responsible citizen to pay taxes to the Government for the welfare of this society. On one hand, people enjoying tax evasion, and on the other hand, the Government, itself, supporting the big businessmen in committing such crimes and aiding them to elope from the own country to some other foreign countries. For instance, big businessmen who have not paid their taxes could be recognized as Vijay Mallya, owner and Chairman of several multi- national businesses, Subrata Roy, chairman of the Sahara et cetera.

In the case of R. K. Garg vs. Union of India,²² it was added by the Supreme Court of India that the main aim behind this particular Act is to undertake a nationwide search whereby tax payers would be encouraged to disclose the amount of black money possessed in lieu of certain amount of incentive that could be granted for the disclosure.²³

MONEY LAUNDERING, A TYPE OF WHITE COLLAR CRIME IN INDIA

Money laundering is a crime in which the criminals disguise the identity of the money and try to hide the original ownership of the money and the place where they obtained that money by illegal means. Laundering is done with the intention of making that money came from legal sources. Such crime is a white-collar crime. In India, Money Laundering could be found occurred by the business classes and the bank officials, they are not stopped from committing the said crime as there involves huge sum of bribery to each and every department of the Government and the respective forum, concerned. Whoever, performs such an offence should be punished severely under section 468 of the Criminal Procedure Code, 1973 with an

²² R.K Garg vs. Union of India, (1981) 4 SCC 675.

²³ Nancy Garg, Tax Evasion, White Collar Crime (18th July, 2021, 10:08 AM), <https://taxguru.in/company-law/white-collar-crime.html>

imprisonment for 3 to 10 years. For instance, if, a person obtains money from black marketing, trafficking of illegal goods the money will be considered dirty and he cannot deposit into the banks as it may seem suspicious if he directly deposit money into the financial institutions because he had to create statements and records stating that where the money came from.²⁴

The various money laundering process includes

a) Operating with the money details and then replacing those with the fake ones

Here in such crime, the offenders operate and copy the banking notes numbers and money details of the registered and legal bank notes and replaces those with the fake ones, should be punished and put them behind the bars. Such crime has been identified as white-collar crime. Such crimes happen behind doors without anyone's knowledge. The Indian Government should stop them from committing such misdemeanor of money laundering.

b) Investment

Obtaining money by illegal means by hiding the original ownership and character of money and then further investing that money, an illegally acquired to obtain and multiply into legal, is a crime recognized under the white-collar crime in India, which is an illegal method of the offenders to increase money, throwing duct to the eyes of the Government and to the people of India in a very precautionary manner and a vague legal way, should punished by deep investigating into the matter, and needs to be put behind the bars for such illegal and notorious offence.

c) Converting illegal money into legal

Illegal money is operating everywhere in our country, with that illegal money, the offenders buying islands, properties, expensive cars, et cetera, but some of 75 percent out of 100, is converted to legal money through the help of bank officials even so through the officials working under the Government, also involves bribery, so as not to get arrested by the Police

²⁴ Prakash, Common Types of White Collar Crimes IN India, White Collar Crime: Detail Study (18th July, 2021, 10:09 AM), <http://www.legalserviceindia.com/legal/article-530-white-collar-crime-detail-study.html>

Personnel. Illegal money could be earned in numerous ways which do not have any legal bill or certificate, need to be stopped, at any circumstances else the economy of the country would fall down. Be it of the Ministers upon who we have given the responsibility of the nation or the state or be it to the bank officials, every one of them, urges to earn illegal money, by the time converts to legal money, showing thyself to the people of this nation, they are the responsible and honest human beings, should be punished under proper legal provisions implied by the Indian Judiciary.

In the case of *Arun Kumar Mishra v. Directorate of Enforcement*,²⁵ it was held that five people created a fake account in the Punjab National Bank (PNB), and thereby collected money as personal gains and caused huge loss to Punjab Nation Bank, but the money laundering case was not held in this case as the offence did not fall under any provision of the Prevention of Corruption Act, concurrently, under Article 20(1) of the Constitution of India, it has been said that ex-post facto laws have no effect, because as per to the said Article it is a fundamental right to not be prosecuted by a law that did not exist at the time of commission of the offence, however, the court said that once money laundering has been fully established against the petitioner, the Enforcement Directorate can initiate a fresh proceeding against him under the law which in force thereafter.

INSURANCE FRAUD, A TYPE OF WHIT-COLLAR CRIME IN INDIA

This is such a crime where when fake offers regarding insurance term & policies, is thrown to the people or customers who want to be under the coverage the insurance policy. The insurance company agents make the customers believe that they could provide the best insurance terms than any other companies where there would be only flashes of profit and no loss to the customers. If any customer falls into the trap of the said insurance fraud policy agents, few times later, it is found that the insurance company gets vanished escaping with the money of the customers and acquired insurance policies. Insurance fraud has been considered to be one of a type of a white-collar crime. Due to this COVID 19 pandemic, the hospitals are those platforms which earned more and profited more, by the same circumstance, many false insurance policies have been offered to people and medical

²⁵ *Arun Kumar Mishra v. Directorate of Enforcement*, (19th July, 2021, 10:10 AM), <https://indiankanoon.org/doc/138056817/>

assistance. A bulk of insurance fraud cases have been reported during this period as it is only the health department and the hospitals, who are working day and night in a full swing.

CREDIT CARD FRAUD, A TYPE OF WHITE-COLLAR CRIME

Evolution of digital India, a whole, new online India, is a major threat towards credit card fraud, which has been recognized as a type of white-collar crime in India. People keep a savings account, fixed accounts, recurring accounts, current account, believing the bank and its officials that their blood and sweat earnings remain safe and secured from intruders and thieves, but the launching of new Digital India Protocol, allows making of credit cards, debit cards, green cards, allowing the offenders and making for them, easier to fraud such credit or debit cards through online mode and the transaction of money is transferred to the offender's bank account in no time due to such fraudulent activity, forgery, hacking and cyber misdeeds. The cases of credit card fraud have risen as the COVID 19 pandemic left people with no jobs, the credit card frauds have been operating more than usual, but no steps have been taken so far as compared to the cases being reported.

An instance of this crime could be recognized, in the year, 2003, Amit Tiwari, based in Mumbai, who was a 21-year-old engineering student was arrested for having many names, many bank accounts and many clients, which were all false, and he managed to defraud a Mumbai based credit card company, CC Avenue, of an amount of Rs.9 lakh.²⁶

CELLULAR PHONE FRAUD, A TYPE OF WHITE-COLLAR CRIME IN INDIA

In this particular crime, the offender uses cellular phone or any electronic device, ask people on the opposite side receiving their dialed phone call, to reply them a unique One-Time Password or OTP number of their credit cards or debit cards, IFSC Code, and various bank details. If someone by mistake uttered the offender his or her OTP Code or other important bank details linked with original bank accounts, instantly, money gets transferred to the offender's bank account. This is one of the most occurred, white-collar crime or offence which is happening everyday and the cyber cell security department of the Indian

²⁶ Aastha Ummat, Types of White collar crimes in India: Credit card frauds, The menace of White Collar crimes (20th July, 2021, 10:12 AM), <http://lawtimesjournal.in/the-menace-of-white-collar-crimes/>

Government are not at all active in catching these thieves instead the Police Personnel even deny to lodge a complaint for such mistake and stealing. The number of offenders or white-collar criminals are being caught are very less as compared to the number of crimes occurring every day. The number of cellular crimes, are occurring more and there are effective steps, hardly being taken, or upgraded to strike hard the offenders of this crime in our society. The callous move from the security personnel enabled the offenders dare to commit such crime. This crime could be called as a cyber crime. People fond of mobile phones and social networking sites too much, to stay aware of such crimes these days. The COVID 19 protocol have increased and pushed the sell and use of mobile phones and social networking sites much more than the mankind have ever expected. Whether it be the children or it may be the adults, everything is operating or running or is being operating via online mode through internet and video conferencing sites and software.

RACKETEERING: A TYPE OF WHITE-COLLAR CRIME

Racketeering is everywhere. Wherever one goes, a kind of racket continues to works throughout our society, spread out in every nook and corner, with a middle man work as head of the racketeering business. Tourist places, gold smugglers, vehicle smugglers, currency smugglers, human trafficking racketeering et cetera are everywhere operating this racketeering business. Huge profits involve in this business, without paying the taxes to the Government, works and smuggles goods and products hiding from the security personnel of the country. Racketeering business even involves bribery to the Government security personnel and Government Officials. Such a type of crime is declared as a kind of white-collar crime. Thousands of goods are smuggled every day through the national borders with help and authority of the market racketeers. The Government even allows such smuggling, in return of bribery, but if bribery is not paid to the Government, it works, as the proper authority, working for people and nation. During this COVID 19 period, racketeering business is playing a major role, in the shape of providing beds to patients in hospitals or nursing homes and making available of oxygen cylinders and ambulances, taking a huge sum of money than the able price, in return accessing help to the people in need, while the Government's security personnel sitting numb, watching everything, not restricting them for acting illegally and inhumane acts or deeds. The tentacles of the racketeering business, is spread throughout India and world, hard to find the head of this racketing business. The

Government must entail, bring & recognize new and appropriate legal provisions or legislations in order to curb the racketeering business in India.

- a) According to a report published in India Today in February, 2019, Raju alias Hakla was arrested for his involvement in 113 cases of murder, decoity and robbery.²⁷
- b) A kidney racket case was revealed in 2019 where a businessman from Gujarat, Brijkishore Jaiswal, was about to undergo an illegal kidney transplant. This happened in Powai's Hiranandani hospital. When the wrongful practice was unveiled, the CEO of the hospital, Sujit Chatterjee and 5 other people were taken under arrest.²⁸

FALSE WEIGHT TO SELL GOODS: A TYPE OF WHITE-COLLAR CRIME IN INDIA

A false way of selling goods or products to people, misappropriating or replacing dispute goods than what was bought is a type of white-collar crime in India. This crime should be stopped. Unless the poor people in our society will suffer more, if, such crime is not restricted.

In the case of Emperor v. Kanayalal Mohanlal Gujar,²⁹ Sawkar, the accused, bought certain quantity of hirda from the vendor, Savleram. 'Adholis' which are primitive methods of measuring weights was used to measure the hirda. Despite warning from the patil of the village to not use these weights as they didn't give accurate measures, Sawkar agreed to use them and later on seize the adholis and filed the suit. Sawkar said that false weight have been used to measure hirda but the court said that since he had agreed to the same and also Savleram didn't had bad intent, Savleram would not be held liable for fraud.³⁰

²⁷ Man involved in 113 criminal cases arrested in Delhi (20th July, 2021, 10:14 AM), <https://www.indiatoday.in/amp/crime/story/man-involved-in-113-criminal-cases-arrested-in-delhi-1462084-2019-02-22>

²⁸ KIDNEY TRANSPLANT RACKET (20th July, 2021, 10:15 AM), <https://timesofindia.indiatimes.com/topic/Kidney-transplant-racket?from=mdr>

²⁹ Emperor v Kanayalal Mohanlal Gujar, (1939) 41 BOMLR 977.

³⁰ Subodh Asthana, Using wrong weights, White Collar Crimes in India (20th July, 2021, 10:17 AM), <https://blog.ipleaders.in/white-collar-crimes/>

COMPANY FRAUDS, A TYPE OF WHITE-COLLAR CRIME

The Central Government under section 211 of the Companies Act, is bound to establish an office named as Serious Fraud Investigation Office or hereinafter to be referred to as the SFIO to investigate frauds which has the power to arrest individuals if it has reason to believe that he is guilty based on the material in possession and it submits a report to the Central Government on conclusion of investigation, but no other investigating agency shall proceed with investigation in a case in respect of any offence under the Act, however, the Central Government may direct the aforesaid SFIO to initiate prosecution against the company, concurrently, the SFIO will share the information they possess regarding a case that is being investigated.

LEGISLATIONS AND INVESTIGATION AGENCIES WHICH COULD CHECK THE RISING CASES OF WHITE-COLLAR CRIMES IN INDIA

Howbeit, despite, such crimes are occurring, “rien n’est éternel.”³¹

The Indian Government has brought legislations so as to punish the white-collar criminals are as follows: The Indian Penal Code, 1860, The Income Tax Act, 1961, The Companies Act, 2013, The Prevention of Corruption (Amendment) Act, 2018, The Essential Commodities (Amendment) Bill, 2020, The Negotiable Instruments (Amendment) Bill, 2017, The Information Technology (Amendment) Act, 2008, The Prevention of Money Laundering Act, 2002, The Imports and Exports (Control) Act, 1950, The Special Court (Trial of offenses relating to the transaction in securities) Act, 1992, The Central Vigilance Commission Act, 2014, The Benami Transaction (Prohibition) Amendment Act, 2016, Public Procurement Act, 2020, The Foreign Exchange Regulation Act 2019, and The Industrial (Development and Regulation) Act, 1951.

Investigation Agencies like Central Bureau of Investigation, Securities and Exchange Board of India, Insurance Regulatory and Development Authority, Reserve Bank of India, Serious Fraud Investigation Office, Department of Vigilance, Enforcement Directorate, etc., which could curb the growing white-collar crime in India unless they do not want to restrict thyself from bribery and orders from the higher authority.

³¹ A French term which means nothing lasts forever.

RECENT JUDGEMENTS REGARDING THE WHITE-COLLAR CRIMES IN INDIA

The recent judgements regarding the white-collar crimes are in seriatim:-

1. In the case of Rahul Radheshyam Bhomavat vs The State of Maharashtra,³² “In this case, such situations of such nature, the grant of anticipatory bail would cause prejudice to the Investigating agency. Unless the Investigating agency is given a free, fair and full scope, it would be very difficult to nab the culprits involved in such white collared scams”.

2. In the case of Sebi vs . Burman Plantation & Others,³³ Before the High Court of Allahabad, the learned counsel on behalf of SEBI claimed that the company is being wrongly accused as the company was not in a position to pay its debts, including payments to its investors, when the advertisement by the company was put to question, the council said that the advertisement was given in 2003 while the order was passed in 2004, when the company was not in a position to payback its debts. Moreover, the sum of money which the investors were claiming was nowhere cited, but the main claim of the counsel made the legislatures raise the punishment from 1 year to 10 years and also increased the fine which may now extend to 25 crores by amending the laws under section 24(1) of the SEBI Act. At last, Ravi Arora, the accused, was held liable.³⁴

MEASURES TO COUNTERACT THE RISE OF WHITE-COLLAR CRIMES IN INDIA

The various measures which need to be undertaken by the government-in-power, the Indian Government are in seriatim:

(1) By ensuring a strict and effective implementation to prevent from committing crime, (2) By requiring expertise to manage the technology based crimes, (3) Fast Track Courts or Tribunals must be arranged by appointing more judges, (4) Strict Laws must be made, (5)

³² Rahul Radheshyam Bhomavat vs The State Of Maharashtra (2020 Bom HC), (20th July, 2021, 10:20 AM), <https://indiankanoon.org/doc/182692708/>

³³ Sebi vs . Burman Plantation & Others (2013), (21st July, 2021, 10:18 AM), <https://indiankanoon.org/doc/78238799/>

³⁴ Subodh Asthana, Recent white collar crime cases in India, White Collar Crimes in India (25th July, 2021, 10:20 AM), <https://blog.ipleaders.in/white-collar-crimes/>

Consciousness about “white-collar crime” must be spread through electronic and printing should be utilized, (6) Establishment: Top Law Enforcement Agencies, (7) Monitoring: The work of the officials, (8) Look after against the corruption in Government Department, (9) Give importance to the originating factors of crimes, (10) Begin Anonymous Reporting, (11) Imply Zero Tolerance Policy, (12) Teach staffs of the business ethics, (13) Have to practice internal audits, (14) Track internet activities, (15) Pro- active strategies are needed in identifying crimes, (16) Need timely action to bring provisions, (17) Implement of Verification Systems, (18) Proper training is required to the investigating officers, etc.

The India society, whereas the community, “en bloc,”³⁵ would bear the never ending pain caused by the patrician, committing, the misdeed back door, paralyzing people & it’s nation, unless the Indian Government awakes.

**The content of this article is intended to provide a general guide to the subject matter.
Specialist advice should be sought about your specific circumstances.**

³⁵ The word quoted and referred above means as a whole.