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Facets of White-Collar Crime in the Indian Legal System

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ABSTRACT

White-Collar Crimes are crimes are planned crimes involving defrauding someone in order to earn a financial gain. Such crimes are committed in the course of an occupation or profession and done with calculative measures thus, it also goes by the name of occupational or professional crimes. White-collar crimes dwell in the social system, economic system and corporate system, an organizational system, and how such crimes affect these systems is dealt in. Researching about white-collar crimes gives an in-depth insight into the particular culture that is the corporate culture and further its subcultures can also be explored. The strategies and methods used to study white-collar crimes are numerous and varied, in the present research paper the researcher has chosen the survey and questionnaire method. The aim of the survey conducted was to gather information from a group of individuals who gave informative insights about the topic under consideration.

Keywords: *White-Collar Crime, Illegal, Occupational crime, Risk, Companies Act, 2013, Fraud, Criminals, Economy, Society*

I. INTRODUCTION

Crime undertaken need not always have to be a violent rageful act. Crime can also be undertaken peacefully under the garb of manipulation by money-minded people whose thirst for money and wealth never ends. Such an act which is undertaken by financially ill-motivated individuals is formally known as White-collar Crime. These crimes are usually done by people of the Elite class or the higher strata. With the economic development in the nation, the need for a better standard of living is also wished for by people, which poses an increase in economic offenses like corporate fraud, tax evasion, stock price manipulation in the stock market, intellectual property infringement, etc., that in turn are a threat to the national security. The quantum and the means and methods of the economic crimes in today's ever-growing economy have been a cause of concern for the citizens mostly small investors, brokers, dealers who have lost a huge amount of money as well as the government constantly

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tries to keep a vigil mechanism to curb such economic crimes. White-collar crimes have several other names to them like ‘corporate crime’ ‘organized crime’ it is basically a deviation from the economic crime which done by a person to attain or obtain a certain status in the society specifically in the course of his occupation or profession. To put it formally white-collar crime got itself a proper definition by sociologist Edwin Sutherland in 1939, as “a crime committed by a person of respectability and high social status in the course of their occupation.” The Federal Bureau of Investigation adopted a narrow scope while defining the term by stating that it was the illegal acts that are characterized as deceit, concealment, or violation of trust. These acts are not dependent on the use of physical force or violence.

(A) Emergence of white-collar crime

When traced back to the emergence of white-collar crime in India, economic crimes are not a new phenomenon. Indeed, these crimes have seen a change in a dynamic way due to the expansion and development of the economy and people having a deviant way of living. When history is explored, it can be seen that in the Vedic period, Manu created a distinction between the good and the bad which in this context can be said to be ‘dharma’ and ‘dharmas’ which are the wrongdoings that people resorted to in order to earn quick money and wealth. Further when looked at from a legal perspective, the Indian Penal Code, 1860 is the oldest law that was regarded as the only recourse for such crimes. Though it does not explicitly define the term white-collar crime but expresses the opinion on other economic crimes like fraud, theft, bribery, corruption, misappropriation of property and also gives the punishment for such crimes and white-collar crime is one such which is closely related to such crimes. The reason for the growth of white-collar crimes can be said due to the rapid development of the economy and industrial growth. Some significant efforts made by the government in curbing such crimes were the introduction of the Santhanam Committee Report in the year 1962. This report primarily dealt with combating the issue of corruption and setting up a vigil mechanism for the same. In the context of white-collar crime, the report stated who the stakeholders are and what is their sufferings in the course of white-collar crime. In 1963, the Vivian Bose Commission of Inquiry drew attention when the affairs of the Dalmia Jain group were brought forward and shown how the industrialists are involved in initiating white-collar crimes. Later, Honorable Justice M.C.Chagla gave out a report on the very famous fraud case done by Haridas Mundhra which went by the name of Mundhra Scandal. This scandal threw light on how industrialists quench their thirst for wealth by defrauding life insurance companies and make false stock market speculations. There are a number of other scams which contribute to the economic crisis in India like the Satyam scam, 2G scam, and many

more. With the recent developments, the corporate world is the worst hit because of these scams and frauds. Also, the introduction of computer technology has led to a drastic increase in cybercrimes all over the globe. It has seriously affected the economy, telecom, and banking sectors creating a need for stricter measures to combat such situations.

(B) Laws governing white-collar crime

With the advent of the increasing scams in the Indian economy, legal recourse has to be adopted and such crimes are investigated under the penal law of the land that is the Indian Penal Code, 1860. The other law which is concerned was the Companies Act, 1956 but it did not define the term fraud but worked corollary with the Indian Penal Code, 1860. Later, under the Companies Bill, 2008, an attempt was made to replace the Companies Act, 1956 under the Dr J.J. Irani Committee Report as it did not explicitly have any provision under the head of frauds committed by the corporations or companies. Furthermore, due to the surge in the corporate scams new legislative reforms were brought which included a separate and distinct definition for 'Fraud' under Section 447 of the Companies Act, 2013 along with the creation of the Serious Fraud Investigation Office under Section 212 of the Companies Act, 2013. Basically, the aim of the legislative reform was to amalgamate other offences given under the Indian Penal Code, which were of similar nature to the offence of Fraud like Cheating, Criminal Breach of Trust, Forgery, Tampering or Falsification of Accounts, etc. Recent Developments which brought in 2020 were in the SEBI (LODR) Regulations, 2015 where all the listed entities are required to send to the Stock Exchange all the disclosures in case of Forensic Audit- with the name of the entity initiating the audit and the reasons for initiating an audit. The entity also has to provide a Final Forensic Audit Report along with the comments made by the Management. The main aim behind the said amendment was to create more awareness and alertness in the Audit Committee and the Board of Directors with respect to the impact of the disclosure on the stock prices of the company.

(C) Types of white-collar crime

In the course of understanding, all are the aspects covered under the garb of White-Collar Crimes, understanding the several ways in which it can be committed is also an important aspect. Some of the major corporate scams that have adversely affected the Indian economy are:

1. Money Laundering: One of the prominent ways to commit an organized crime is through Money Laundering. In this form of crime, an attempt to cover up the ownership of the money earned through illicit and illegal ways is made. The aim behind such an offence is

to evade the huge amount of taxes. The root cause of this offence lies in the phenomenon of Corruption. Money Laundering is done by individuals to hide the source of the black money and disguise it by investing in the capital markets. Stringent law in the form of Prevention of Money Laundering Act, 2002 has been enacted but people still are able to get away with the offences.

2. Insider Trading: Insider Trading is a kind of offence that relates more towards the Criminal Breach of Trust. When before any issue of shares of any company, any individual or employee passes out confidential information to an outsider with a view to earning a profit, this process is called insider trading. Insider trading is a type of malpractice undertaken by employees in which stakeholders are the sufferers because of the valuable information that is passed outside of the corporation.

3. Bank Fraud: A Bank Fraud is the basis of any financial scam. Bank Fraud usually consists of misuse of negotiable instruments like, cheques, securities, bank deposits, etc. Bank Fraud directly affects the public at large as banks are corporations that are linked with the Government and money deposited or remitted out of the bank have to be recorded with the bank of the Government that is the Reserve Bank of India.

4. Bribery: Bribery is the payment of money by one individual to another person in order to get work done easily and smoothly. In other words, when a person pays money to another person who is in a place of Authority, that is called Bribery.

5. Tax Evasion: Tax Evasion is primarily constituted as tax fraud. Evading taxes by businessmen has become a common phenomenon because none of them is willing to pay more taxes above the fair share and want to reduce their tax liabilities to the Government. The Income Tax Act, 1961 explicitly punishes tax evasion in accordance with Chapter XXII.

6. Forgery: Tampering of documents or more particularly tampering or making changes in negotiable instruments is called forgery. Counterfeiting of checks or other securities done with an intention to defraud the other party is called a forgery. It is common in company's affairs as the employees make changes in the disclosures or reports misrepresenting false information with the aim to avoid penalties and punishments.

7. Hawala Trading: Hawala trading is the movement of money without actually moving the money. In Hawala Trading, no books of accounts are maintained and the flow of cash is recorded only by the Hawala Trader or agents. This type of transaction is done over borders without any collateral and is kept away from the method of the normal banking process.

8. Ponzi Scheme: Ponzi scheme is a kind of investment made which yields high returns within a short period of time. In this the risk involved is minimal and returns are at a higher stake. This type of fraudulent scheme produces returns for early investors while maintaining a balance by having a steady flow of return to the old investors. Once the funds run out the scheme falls apart.

(D) Statement of problem

Individuals who commit white-collar crimes are the ones who initiate fraudulent transactions or deliberately give out false information so as to manipulate the share market. Such criminals are also people who are authorities and are politically motivated and paddle their resources to maintain the position that they hold. Even a banker or broker can commit such a crime in a way by misappropriating funds for himself to evade taxes or increase his stock of wealth.

A white-collar criminal may seem to be an elite and genuine criminal who has never seen the way to a criminal court proceeding or to prison. Although, white-collar crime has not earned too many definitions for itself still the basic concepts that it covers of criminology and the unexplored facet of illegal behavior also can be bought out while digging deep into this subject. White-collar criminality poses questions with respect to the social health and the integrity of society as a whole.

White-collar crimes are subtle and possibly invisible because tracing the tracks of illicit transactions turns out to be a difficult task. The designation that white-collar crime holds covers the illegal business done not just by individuals but also by corporations. White-collar crimes furthermore allow more insight into the corporate culture and its subcultures with an insider's view.

With the rapid increase in the number of white-collar crimes, society gets affected at large. The laws are present and in place but need to be administered and amended with the developing times. There is a dire need for proper administration in order to curb the factors which add to the process that encourages the commission of such crimes.

White-collar crimes have a huge impact financially on society. Whenever the due process of curbing the crime comes out in the society the people are the worst hit because of the job losses as well as the financial loss that they have to face. The people lose confidence in the companies and the stock market due to the financial crunch that they face.

Looking from the perspective of the companies which go into premature closure due to such acts, genuine efforts which are put into reaching the profitability mark are lost in vain due to

someone's wrong intention coupled with wrong business decisions. The companies in such cases fail to honor their creditors and customers which ultimately leads to premature closure of the business entity.

The question that arises is that whether such organized and invisible crimes are responded to with utmost caution by the Authorities in order to save society from such heinous acts of people. Thereby, the researcher has made an attempt to provide elaborate research with the unethical response of white-collar crime on the corporate culture and its subcultures.

(E) Research Methodology

The researcher has made an attempt at including doctrinal as well as non-doctrinal methods of research. The doctrinal approach involves reference from legal articles, legal research papers, books, and commentaries, etc. The types of studies used in this Doctrinal approach are Descriptive, Explanatory, and Critical studies or a combination of some or all. The Non-Doctrinal Research included the usage of the interview method and the survey method which were undertaken by the researcher.

The interview method is art governed by certain scientific principles. The interviewer (researcher) had formulated the questions for the interview with a view to creating a friendly atmosphere of trust and confidence so that the respondents were at ease while answering the questions. The other method applied in the form of the interview was the telephonic interview due to the time constraint and with the ongoing pandemic, the researcher was unable to take an interview in physical mode. The respondent was contacted through telephone and rendered to be a quick mode of obtaining information. Another method of the interview which was undertaken was through mailing the questions to the respondents, which then turned out to have a higher rate of response. Due to the virtual method of data collection, the geographical coverage was extensive and unrestricted.

The other method employed for obtaining information was the survey method. The survey is a more common form of data collection in order to study white-collar crimes. The aim to employ this method was to collect information from a group of individuals and use that information to formulate a proper research base for the topic under consideration. Groups who were surveyed included crime justice officials, members of the public, victims of white-collar crime, and offenders. Each of these groups or individuals provided information about the various aspects of white-collar crime.

The most convenient and substantial research was obtained from the members of the public to assess their experiences and thoughts about white-collar crimes. This method rendered to be

successful due to the following reasons:

1. It provided a baseline for the researcher in creating wider scope for the topic in consideration.
2. As white-collar crimes directly affect society at large, then obtaining first-hand information from the members of the society gives a fairer and true picture for the topic.
3. A lot of particular and specific information was obtained from this particular group of people.
4. Surveying members from the public gave the researcher access to a direct and a huge group of individuals adding to the stock of research.

The researcher also made an attempt to approach the victims of white-collar crimes. These included individuals, officers, businessmen, etc. They were approached by way of online research or newspaper articles and press reports. The only drawback faced while obtaining information from this group of people was the reluctance in the behavior while giving out information. They tend to miss out on several important points because they did not build trust with the researcher and a sense of embarrassment was present in sharing their experience in getting defrauded and scammed in the first place.

The least amount of information was obtained from the group of individuals who have been offenders of such crime. As the information was not directly collected, the reluctance factor was the barrier because sharing their experience created a stigma in their minds with respect to sharing information with the researcher.

Although, all the method which were used to collect information, barriers were faced substantial information could be extracted to formulate the present research paper. The comprehensive methods chosen posed to be a hurdle while evaluating and comparing the results. Another hurdle was that due to the limited number of respondents with respect to the current topic, the answers obtained were not precise and generalize. The lack of awareness of white-collar crime also made it difficult to develop and collect results. In spite of all the hurdles, the method and tool employed were empirically useful to assess and draw a study in relation to white-collar crimes.

(F) Research Objectives

The research paper is governed by the followed objectives:

1. Brief summarisation on white-collar crimes, its aspects and its effect on the economy and the society at large.

2. Elaboration on legal aspects pertaining to White-Collar Crimes and the amendments made thereon for the benefit of the society.

3. Impact of White-Collar Crimes on developing economy and its consequences on the corporate culture and its subcultures.

4. Various tools employed in ascertaining the illicit and illegal practice undertaken in the course of White-Collar Crime by the corporate bodies and businessmen.

5. Suggestions and recommendations in combating such crimes and advocating various ways towards creating a more transparent system with respect to White-collar crimes.

(G) Literature Review

In the furtherance of this research, the researcher made use of several books and other research articles. To have a comprehensive understanding on the issue of white-collar crime the researcher has reviewed various literature consisting books, articles (retrieved physically or through data base), dealing with this area of study. The following is the review of such literature which has influenced this research.

Books Referred:

1. Avtar Singh, *Company Law* (2018), 17th Edition, Eastern Book Company, New Delhi.

This book provides an in-depth knowledge about the Companies Act, 2013 which includes topics pertaining to corporate law and the new amendments made there on. This book provides information required under the head of Fraud under Section 447 of the Act; the disclosures that have to be made by the corporate bodies under this Act. The researcher has made use of this book in order to provide in depth and comprehensive knowledge about the topics covered under Company Law.

2. Ratanlal & Dhirajlal, *The Indian Penal Code* (2013), 34th Edition, Lexis Nexis, Gurgaon, Haryana.

The researcher has chosen this book as this is one of the most prominent and a hallmark for studying criminal law. The book provides in depth knowledge about the criminal aspect that the researcher has discussed. The book gives information on how the white-collar crime has been reduced under section 463 to 474 of IPC and they include defilement and remuneration, nourishment and medication contaminated, tax avoidance, dark advertising, profiteering, storing, tax evasion, human trafficking, digital wrongdoings and so on.

3. C.R. Kothari, *Research Methodology Methods and Techniques*(2004), 2nd Edition, New Age International (P) Limited, Publishers, New Delhi .

This book has been used by the researcher to get insights about overview of research methodology, techniques of defining a research problem, research design, study of different methods of data collection, various statistical and non-statistical tests for data analysis on a larger perspective. It also includes the conceptual aspects and circumstances under which various multivariate techniques that can be appropriately utilised in research studies. The researcher has made efforts to understand the concept underlining the basic question of research and the various methods of sampling, tools for research methodology and how they were appropriate with respect to the statement of problem formulated by the researcher.

Articles Referred:

1. “White-collar Crimes: A Legal Challenge on Indian Corporate System” by Dr. Gyanendra Kumar Sahu

This paper helped in underlining the basic concepts of White-collar Crime. The paper seeks to express a perspective on White-collar Crime and evoke the impact and concerns of white-collar crime on the Corporate system. It also lays down measures taken by the Legislative bodies to deal with such crimes. It explains how white-collar crimes not only victimize the body corporates but also members of the society. The economic offenders have a knack of exploiting weaknesses in any system. In recent times the number of economic crimes have risen gradually because of the rapid development in the economy.

2. “Introduction and Overview of White- Collar Crime; A Systems Perspective” by Brian K Payne

This research article explores how crimes are committed by businessmen and not against businessmen. It explains how the crimes committed against businessmen are a new field of study and unexplored, as would also the crimes have committed by professional men, farmers, and certain other occupational groups. These other aspects of such crime are also explained and how the upper socioeconomic strata of people make strategies for wealth from illicit ways. While attention is concentrated on the crimes of businessmen, this is not done as an attack on business but as an attack on the current theories of criminal behaviour. The purpose behind making use of this article was to explain how this area of criminal activity does not attract attention by the Authorities but in the process affect the economy deeply.

3. “White-collar Crime Survey” by Indian National Bar Association

The researcher has made use of this article as it explains the history and the roots of white-collar crimes. It explains how White-collar crimes find their footing in history upon intersection of business and the law, and its interaction with innovation, moral discourse and public perception, as well as the changing nature of state policies over the centuries. The article also emphasises on the survey is added as an extension to serve as a detailed guide for understanding various contours of white-collar crimes. It includes the motives of people committing white-collar crimes and as to the essentials of the same. This article has served as one of the prominent sources in quantitative data collection.

II. JUDICIAL DECISIONS

1) Mundhra Scam

It was in the case of Life Insurance Corporation Of vs Hari Das Mundhra And Ors. that independent India saw the emergence of white-collar crimes. In this case, Harish Mundra, an industrialist, and stock speculator took to selling fictitious shares to the Life Insurance Company which led him to defraud the Company for an amount of One Hundred and Twenty-Five Crores. A one-person committee was set up to investigate the case by the then Prime Minister Mr. Jawaharlal Nehru which consisted of Honourable Justice M.C. who decided the matter in which Haridas was found guilty and was sentenced to imprisonment of 22 years and T.T. Krishnamachari, the then Finance Minister, resigned from his position.

2) Satyam Scam, 2009.²

This scam case is said to be one of the biggest scams in the history of India. The chairman Ramalinga Raju had manipulated the financial statement and the books of accounts. Satyam's books of accounts depicted how he overstated his assets to Rs. 490 crores, showed a fake cash balance of Rs. 5000 crores. The Interest component from his Profit & Loss Account showed a flow of Rs. 376 crores which never happened. He also went on to state his liabilities to Rs. 1230 crores. This inflated his revenues and the net profit went up showing a fake profit in his financial statement. Due to this dubious act of his, people suffered a lot. He had to pay a hefty penalty but also the sufferers were made to pay the price for such an act.

3) Harshad Mehta Scandal³

Harshad Mehta scam was one of those scams which shook the economy in the year 1991. He

² Byraraju Ramaa Raju v. CBI (*Satyam Scam*), SLP(CrL.) No.7805/2011

³ Harshad Shantilal Mehta vs. Custodian & Ors 1998 ECR 1 SC, JT 1998 (4) SC 323.

had defrauded many small investors by obtaining fake bank receipts from small banks. These fake bank receipts were then passed on as security to other banks to get cash which was then further invested in the stock market to increase the stock prices. When this came to the attention of the regulatory authorities, the bubble of stock manipulation was busted and the scam of fake bank receipts was brought out. This scam affected the economy at a huge scale, because of which the economy and banking sector suffered a tremendous loss of Rs. 5000 crores. This case was mainly focused on the manipulation of accounts and giving out misleading and false information.

4) Sahara v. SEBI⁴

This case included the involvement of two companies of the Sahara Group namely; Sahara India Real Estate Corporation Limited and Sahara Housing Investment Corporation Limited which defrauded his investors by showcasing false information in their prospectus with a promise on return in investment at the rate of 15% within 3 months. This option was given only to those investors who bought the Fully Convertible Debentures. This issue was placed under Private Placement by the Company which would then lead the company to take a defense of the same. The Supreme Court on the investigation later discovered that the Fully Converted Debentures were unlisted on the Stock Exchange because the securities issued were hybrid in nature. By this time the collection went to a whopping amount of Rs. 17656 crores. The Supreme Court then went on to rule out that the amount so collected was to be refunded back to the investors within a period of 3 months and also gave eminent powers to SEBI with regards to listing and delisting of companies as well as securities of such companies.

5) 2G Spectrum Scam Case⁵

A very famous telecommunication and political scam case. This case saw the involvement of many reputed and high-class politicians, government officers, and businessmen. The initiator of the scam was the then telecom minister, Mr. A Raja. He allegedly had amended the rules of the auction to benefit a few telecom players particularly. He allocated a unified access service license which led to this dubious scam making the economy suffer huge losses.

⁴ (2012) 10 SCC 603

⁵ CBI Vs. (1) A. Raja (A1); (2) Siddhartha Behura (A2); (3) R. K. Chandolia (A3); (4) Shahid Usman Balwa (A-4); (5) Vinod Goenka (A5); (6) M/s Swan Telecom (P) Limited (now M/s Etisalat DB Telecom (P) Limited) (A-6); (7) Sanjay Chandra (A7); (8) M/s Unitech Wireless (Tamil Nadu) Limited (A8); (9) Gautam Doshi (A9); (10) Surendra Pipara (A10); (11) Hari Nair (A11); (12) M/s Reliance Telecom Limited (A12); (13) Asif Balwa (A13); (14) Rajiv Agarwal (A14); (15) Karim Morani (A15); (16) Sharad Kumar (A16); and (17) Kanimozhi Karunanithi (A17). 45 (A) 2009, CBI, ACB, New Delhi.

III. DATA ANALYSIS

The researcher has opted for Qualitative research for data analysis. Qualitative data includes interviews of lawyers, company secretaries, and the general public who have either heard of or been victims of or witnessed the phenomena of white-collar crimes. Following are the summarized version of the answers that the respondents have given to the set of questions prepared by the researcher.

Que 1: - What do you understand by the term white-collar crime?

Ans 1: - White-collar crimes are crimes done for financial benefit. Such crimes are done in an individual capacity with the aim of gaining profit and maintaining a social status that they already possess. Such acts are usually done by people who work for a firm or company and under the garb of the corporate body, the employees or directors undertake such activities.

White-collar crimes are committed by people of the upper class of society. Such crimes are usually synonymous with occupational crimes because these are committed in the furtherance of the profession or occupation of the person committing them.

From the observations collected, it was summarised that the respondents knew well about the crime and were aware of the phenomena. The majority of the audience had a clear understanding of the concept of white-collar crime.

Que 2: - What are the possible motivational drivers for people to commit a white-collar crime?

Ans 2: - The definition of white-collar crime clearly says that it is a non-violent form of crime undertaken only for the financial benefit yielding out of it. Such crimes are not done with a view of seeking revenge or avenging someone but with soul purpose for financial and monetary gain.

At the same time, certain observations that were collected showed that these crimes can be undertaken for revenge coupled with the profitable gain arising out of it. Such crimes can be carried out with a view to defraud some person out of personal vengeance.

Que 3: - Can white-collar crime be committed by people having a social status? State reasons for your answers.

Ans 3: - While recording this answer, one respondent gave out a clear explanation that white-collar crimes have to be committed by people of the upper class because if such crimes were to be committed by commoners or middle-class groups of people then it would constitute a blue-collar crime.

Another response was recorded as that white-collar crime can be committed by anybody irrespective of their social status because it is the willingness to take the risk that drives a person to commit such a crime or not.

Que 4: - Is literacy and corporate experience a criterion for people to commit white-collar crimes?

Ans 4: - White-collar crime is an act done by calculating the risk involved. Not just risk but there are other prerogatives that have to be found out while committing a white-collar crime. A person has to have a fair understanding to search out for loopholes in the system and law to commit such a crime. So, by the time a person understands the system he is working in and the loopholes in it, he gains experience thereby literacy and experience go hand in hand while committing such crimes.

A contrasting view was also recorded that education is just a criterion because the level of education is difficult to determine as a person possessing minimum education also can with common prudence and analysis of situation along with the choice of taking a risk also can make up his mind into committing such a crime. If looking into the experience part, if a person is capable enough to commit a calculated and organized crime with bare minimum knowledge then having experience or not is also secondary as the eagerness to earn money is kept at a higher stake.

Que 5: - As members of society who have either seen or suffered the impact of white-collar crime, what according to you is the quantum of loss that a corporate body suffers due to a white-collar crime?

Ans 5: - Such crimes are committed by individuals under their professional capacity, so even if they don't want, the business and corporate house get affected at large. White-collar crime is a cumulative phenomenon that includes other crimes like fraud, embezzlement, misappropriation of property, etc so, the quantum of loss that a corporate body suffers cannot be quantified but a minimum of 5% is lost from the total turnover and profits separately.

White-collar crime is not only detrimental to the growth of the corporation but also the reputation and goodwill are lost in this course. The course of action undertaken while tracing the fraudulent transactions, phony schemes, the amount of commercial bribery leads a corporation to premature closure also. So, not just financially but even on an overall footing, the corporate bodies suffer huge losses. The human resources which are lost are unmeasurable.

IV. ANALYSIS OF LEGISLATION

1. Indian Contract Act, 1872:

Under the Indian Contract Act, 1872, White-collar Crime falls under the ambit of Fraud as is defined under Section 17 of the said Act.

Fraud defined- 'Fraud' means and includes any of the following acts committed by a party to a contract, or with his connivance, or by his agent, with intent to deceive another party thereto or his agent, or to induce him to enter into the contract:

1. the suggestion, as a fact, of that which is not true, by one who does not believe it to be true;
2. the active concealment of a fact by one having knowledge or belief of the fact;
3. a promise made without any intention of performing it;
4. any other act fitted to deceive;
5. Any such act or omission as the law specially declares to be fraudulent.⁶

2. Indian Penal Code, 1860:

'Fraudulently' means, a person is said to do a thing fraudulently if he does that thing with intent to defraud but not otherwise.⁷ The Penal code does not categorically define 'white-collar crimes' but penalises other acts which are related to these crimes such as breach of trust, misappropriation of property, bribery, corruption, forgery, cheating, counterfeiting of currency, etc.

3. Prevention of Corruption Act, 1988:

The issue of corruption is very dangerous to nation. The *Sanathan Committee Report, 1964* defines the problem of corruption as a complex problem having its roots and ramification in the society itself as a whole. This Act consolidated the provision of IPC, CrPC and Criminal Act, 1952. This act has provided the definition of 'Public Duty', 'Public Authority' and 'Public Servant'. These definitions are sufficient to determine the criminal liability of Public Officer.

4. Prevention of Money Laundering Act, 2002:

In India, money laundering is being practiced in large scale from past few decades. Due to which the socio-economic crimes have been increased rapidly. The process of conversion of

⁶ Section 17, Indian Contract Act, 1872.

⁷ Section 25 of Indian penal Code (45 of 1860).

black money into white money or the process of conversion of tainted money into untainted money is called money Laundering. Thus, the main purpose and the objective of this act is to prevent Money Laundering. The concept of Money Laundering is an International concept and menace and for the same reason, United Nations adopted a political declaration in June 1998 and asked its members to enact the national legislations for the prevention of Money Laundering.⁸

5. Companies Act, 2013:

The Companies Act, 2013 is the legislation which focusses on issues related to Corporate Fraud. Fraud in relation to company or corporate body is defined under section 447 of this Act.

Section 447- Punishment for Fraud⁹:- Without prejudice to any liability including repayment of any debt under this Act or any other law for the time being in force, any person who is found to be guilty of fraud, shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to ten years and shall also be liable to fine which shall not be less than the amount involved in the fraud, but which may extend to three times the amount involved in the fraud:

Provided that where the fraud in question involves public interest, the term of imprisonment shall not be less than three years.

Explanation. —For the purposes of this section—

(i) “fraud” in relation to affairs of a company or any body corporate, includes any act, omission, concealment of any fact or abuse of position committed by any person or any other person with the connivance in any manner, with intent to deceive, to gain undue advantage from, or to injure the interests of, the company or its shareholders or its creditors or any other person, whether or not there is any wrongful gain or wrongful loss;

(ii) “wrongful gain” means the gain by unlawful means of property to which the person gaining is not legally entitled;

(iii) “wrongful loss” means the loss by unlawful means of property to which the person losing is legally entitled.¹⁰

⁸ Sangeet Kedia’s Economic and Commercial Law (June 2018, Pooja Law Publishing Co.)

⁹ Section 447, Companies Act, 2013

¹⁰ <http://ebook.mca.gov.in/Section 447 of the Companies Act, 2013>.

6. Information Technology Act, 2000

With the development in economy the technology sector is also on a boom which causes for a vigil mechanism to be set up for legal recognition to the crimes which are committed on the technological platforms which is why Information Technology Act, 2000 was enacted. This Act deals with the cyber crimes that are done in the furtherance of the white-collar crimes. Chapter XI and XII of the Act deals with offences and penalties and adjudication of crimes.

7. Fugitive Economic Offenders Act, 2018

This Act is a fairly new addition to the enactment for curbing white-collar crimes. This Act aims at punishes those criminals who commit white-collar crimes and flee away to some other country to seek protection from the punishment. Such offenders are called 'fugitive economic offenders' who can be arrested by a warrant under a Schedule Offence which has been issued by a Competent Court.

V. CONCLUSION

The study of white-collar crimes goes a long way, the experts, sociologists, businessmen, and other prominent people believe that the patterns adopted by such offenders are basically due to the dysfunctional system of economy that they function or work in. White-collar crime is closely related to the attitude and behavior of an individual along with the values that a person perceives from a society. Individuals who turn out to be white-collar criminals live in reputed neighborhoods, have a lavish life to themselves, they have a stable standard of living but the urge to get a step ahead and earn a bit more than they are is a driver for such people to commit such crimes. White-collar crimes are usually categorized as occupational or professional crimes but no occupation or profession has such a huge influence or expects an individual to choose the wrong way in order to earn quick money.

In an overall aspect, white-collar crime has to determine factors to itself but no such factor is so strong to conceal a moral judgment. No factor encourages a person to adopt unethical practices or immoral courses of action. Financial gain is the whole and sole factor that can make a person's thinking irrational and deviate from the ethical way of practice.

Suggestions

The Legislature has enacted laws to curb such actions but if they are not implemented properly then there is no use of such laws. To curb such crimes, action needs to be taken at the organizational level. Efforts need to be taken while keeping tabs and track of the affairs of the organization taken up by the employees which is also called employee screening.

Employee screening or scrutiny needs to be done at length and regularly. Organizations can establish multiple layered scrutiny systems, in such cases concentrating more work on a group of employees which will provoke them to commit malpractices shall be avoided. A thorough verification should also be made compulsory while dealing in transactions bearing a huge amount. Companies Act provides for a type of audit known as the internal audit; this is beneficial for healthy working of the organization at the same time keep a check on the affairs of the employees as well. The organization should also maintain transparency with the transactions that it is undertaking. Proper disclosures, whistle blower policies in place should be made to SEBI, Stock Exchanges, and Government.

Above all, the Government also has a role to play in combating such crimes by not just enacting laws but making sure that such laws are implemented properly. Government regulatory authorities shall take efforts to raise awareness among the corporate bodies and general public to educate and keep them informed about such phenomena. Moreover, in such cases the courts take the normal course of action which leads to pendency and later acquittal of the scamsters, thereby there is a dire need to bring such criminals to the court at the earliest and book them but also, decide such cases through the fast-track mode because prolonging such proceedings may lead to a bigger quantum of loss which can be reduced at the first instance.
