
INTERNATIONAL JOURNAL OF ADVANCED LEGAL RESEARCH

**EXISTING LEGAL PROVISIONS TO DEAL WITH WHITE COLLAR
CRIMES IN INDIA**- Mahi Bhan¹**ABSTRACT**

White collar crime, a multifaceted and elusive form of deviance, has garnered increased attention in contemporary society due to its far-reaching implications on economic stability, social trust, and institutional integrity. This abstract aims to provide a comprehensive overview of the dynamics, motivations, and consequences of white collar crime, drawing from interdisciplinary perspectives in criminology, sociology, psychology, and economics. The term "white collar crime" encompasses a diverse range of non-violent, financially motivated offenses committed by individuals or organizations in positions of trust and authority within legitimate institutions. These offenses include fraud, embezzlement, insider trading, bribery, and cybercrime, among others. Unlike traditional street crime, white collar crime often occurs within the confines of corporate boardrooms, financial institutions, and government agencies, posing unique challenges for detection, prosecution, and deterrence.

- **Introductory**

After analysing the definitions and generic features of white collar crimes, the next step is to study the legal provisions dealing with white collar crimes. The law relating to white collar crimes is different from some other areas of law. Where property and contract law, for example, possess a stability that makes it easier to grasp their fundamentals, white collar crimes are changing so rapidly that it is difficult to provide a firm or constant setting for its understanding.

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White collar crimes are committed in case fraud is committed in the course of occupation. The person who is defrauded may be government or an individual or group of individuals or consumers or the society as a whole. There are different kinds of white collar crimes like corruption, insider trading, criminal breach of trust, cartel offences, tax evasion, black marketing and profiteering etc. While one species of white collar crimes such as profiteering, assumes importance at one stage, at another stage it might pale into insignificance, and other species of white collar crimes, such as tax fraud might come into prominence². White-collar crimes are pervasive in almost all the professions and occupations in our society.

As the sources of white collar crime are scattered there can be no single or omnibus law to deal with the menace. The importance attached to each species of white collar crime has varied from time to time. Accordingly, the legal frameworks developed to combat these crimes are dispersed in penal laws, economic laws, tax laws and various regulatory mechanisms. Also, the kind of proceedings that can be initiated against the wrongdoer varies from one case to another depending upon the facts of the case. There is no exhaustive list provided by the legislature enumerating the instances of white collar crime.

In the ever growing economy newer opportunities for committing white collar crimes emerge. The legislation in order to address the problem posed by new regime pass more laws. The researcher has not come across any work which exhaustively lists white collar crime. Therefore, to enlist all the offences, figuratively speaking, is a minefield. However, an attempt has been made to enlist various statutes dealing with white collar crime along with the criminal sanctions that can be imposed in case of violation.

- **Liability For White Collar Crimes**

White collar crime is not a unitary concept. One set of facts pointing to misconduct may trigger multiple proceedings. Statutes aimed at regulating white collar crime often

²The Law Commission of India, Twenty Ninth Report on 'Proposal to include certain Social and Economic Offences in the Indian Penal Code (1966)', p.17.

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provide multiple, alternative sanctions. The sanctions may include imposition of penalty by the adjudicating authority established under the Act or monetary fines or forfeitures, seizures of goods or prison sentences. The aim of these sanctions is same and that is to control the activities relating to white collar crime. However, the proceedings may vary depending upon the intensity of the 'act'. The different contexts in which a white collar crime 'act' can be made liable are discussed hereunder.

- **Civil Liability**

The 'acts' designated as white collar crimes are committed in the course of occupation. In order to regulate the occupational behaviour a number of rules and regulations have been designed by the legislature. These regulations comprise of the manner in which the business or occupation is to be carried out.

In case of violation of these rules, civil penalties can be imposed. Civil penalties are imposed by the adjudicating authority established under the respective Acts. The adjudicating authorities have the powers of Civil Court and are generally exempted from following technical rules of Indian Evidence Act, 1872 while deciding the liability. The adjudicating authorities belong to the same department which has been set up for administering, regulating and monitoring the provisions of the Act. These authorities possess special skill or knowledge required for understanding the technical intricacies of the Act. Generally, the right to appeal to higher authority is also provided under the Act. Civil proceedings require a lower standard of proof, have less procedural safeguards for protecting the offender and are non punitive in nature.

- **Criminal Liability**

In addition to civil liability, the statutes also provide for imposition of criminal liability. The purpose of providing for criminal sanctions is twofold. Firstly, it adds dimension to the full treatment available by giving the enforcement agencies one more weapon and secondly, white collar crime is not only a crime against the individual but a crime against the society.

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So it can prove effective in restraining the behaviour of businessmen. These provisions are not in derogation to the civil penalty imposed but are in addition to it.

Criminal prosecution is generally initiated at the complaint of the concerned department. A criminal prosecution requires a high standard of proof and is with a view to impose punitive action so that society condemnation to the alleged act is proved. The Acts which deals with a particular specie of white collar crime specifically mentions the criminal liability that can be imposed for violation of those Acts. In cases where the criminal liability is not mentioned the person is charged under the general penal provisions of Indian Penal Code, 1860.

- **Others**

In addition to civil and criminal liability which is enforced by the law enforcement machinery, there are many other actions that can be initiated depending on the nature of offence and offender. For example, if the violation takes place in a company, 'internal' proceedings can be initiated against the wrongdoer. 'Internal' means within a company or an organisation without the interference of any external law enforcement agency. Internal proceedings are initiated in order to protect the internal integrity of the member operations. In India, the system of establishing internal controls in the companies is based on the principle of corporate governance, which means ethical conduct in the business. The concept is implemented through Clause 49 of the Listing Agreements, by Securities and Exchange Board of India. Under this, the companies or organisations frame policies on different aspects like grievance redressal, whistleblower etc. They are established with a view to keep a watch dog on the activities within the organisation to nip the evil in the bud. Therefore, whenever a criminal activity like fraud is detected in a company, the company in place of reporting it to a law enforcement agency, itself investigates and gives punishment accordingly. Internal authorities are inquisitorial in character. The punishment may vary from dismissal in service to transfer to reduction in rank etc. So whenever some suspicious activity is detected or reported the internal mechanisms swing into action.

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Another kind of proceedings which can be initiated in case of some white collar crimes is 'disciplinary' proceedings. These proceedings are conducted when the misconduct is done by a civil servant. Every person in civil service is expected to follow certain norms of behaviour which is contained in Central Civil Services (Conduct) Rules, 1964 and the All India Services (Conduct) Rules, 1968 etc. In case a person in civil service violates these rules or is suspected of misusing his official position then, disciplinary proceedings can be initiated against him. The term 'disciplinary proceedings' is not been defined as such under any legislation or rules. It means an action initiated to find whether an employee has violated a prescribed or implicit code of ethical and professional conduct to enable the employer to impose penalties on the guilty³. The rules regarding disciplinary proceeding and the manner in which it can be imposed is contained in the Central Civil Services (Classification, Control and Appeal) Rules, 1965. Under the disciplinary proceedings two kinds of penalties are imposed i.e. minor penalty and major penalty. Minor penalties consist of censure, withholding of promotion for a specified period and withholding of increment and recovery from the salary of whole or part of pecuniary loss caused by the employee. Minor penalty can be imposed after calling for and considering the explanation of the accused employee. Major penalties comprise reduction in rank through reversion to a lower scale of pay or to the parent cadre etc, compulsory retirement, removal or dismissal from service⁴. Such penalty can be imposed only after a detailed inquiry is conducted except in cases where an not practicable.

A serious fraudulent activity will thus result in a number of parallel and collateral proceedings. There may be internal action in case of companies together with external action by other agencies. Disciplinary proceedings can be initiated against a public servant together with criminal proceedings. But each proceeding has a distinctive imperative.

³The Second Administrative Reforms Commission, Fourth Report on 'Ethics in Governance (2007)', p.98

⁴Rule 6 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965.

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The arena of white collar crimes is wide. There are a number of statutes which provide for criminal liability for white collar crimes. The criminal sanctions that can be imposed for white collar crimes are discussed hereunder.

- **Offences Under The Indian Penal Code, 1860**

The Indian Penal Code, 1860 does not provide punishment for white collar crimes. Neither has it criminalised 'fraud' as such which is a fundamental constituent of every white collar crime. However, there are provisions in the Code which are invoked for penalising white collar crimes. As the Code is a substantive criminal law code, the proceedings are criminal in nature. The various provisions of the Code which are invoked to deal with white collar crime are discussed hereunder.

- **Dishonest Misappropriation Of Property**

The Indian Penal Code, 1860 provides criminal liability for dishonest misappropriation of property. 'Dishonest misappropriation' means using the property including money in a way different from what was bound to be done by virtue of contract or as a result of a legal relationship created through some process of law. Dishonest misappropriation of property is white collar crime as here the intention is to defraud the person.

- **Criminal Breach Of Trust**

Criminal breach of trust means that when a property which is entrusted to a person is misappropriated. This entrustment may be because of a legal contract or position in which the person is placed. Criminal breach of trust is the most profound type of white collar crime.

In order to establish the offence of criminal breach of trust under the Indian Penal Code, 1860 the necessary ingredients are that the accused must be entrusted with some property or with any dominion over property; he must dishonestly misappropriate or convert to his own use that property or willfully suffer any other person to do so; the use must be in

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violation of any direction of law prescribing the mode in which such trust is to be discharged or of any legal contract, that has been entrusted to him⁵. A person who is liable for dishonest misappropriation of property shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both⁶.

Section 407 of the Indian Penal Code, 1860 specifically talks about criminal breach of trust by carriers or wharfingers and makes them liable for a punishment with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Section 409 of the Indian Penal Code, 1860 penalizes criminal breach of trust if the property is entrusted to a person in his capacity of a public servant or in the way of his business as a banker, merchant factor, broker, attorney or agent. The person held liable shall be punished with imprisonment for life or with imprisonment of either description which may extend to ten years and shall also be liable to fine.

- **Cheating**

Many times a person is defrauded and there is no specific law to deal it. In such situations a person becomes liable for cheating. The essence of the offence of cheating is that damage or harm is caused by deception. In order to make a person liable for cheating under the Indian Penal Code, 1860 the necessary ingredients are deception of a person either by making a false or misleading representation or by other actions or omissions; fraudulent or dishonest inducement of that person to either deliver any property or to consent to the retention thereof or to intentionally induce that person to do or omit to do anything which he would not do or omit if he were not so deceived; the act or commission causes or is likely to cause damage or harm to the person induced in body, mind, reputation or property⁷. A dishonest concealment of facts is a deception within the meaning of this Section⁸. Whoever cheats shall be punished

⁵Jaswantrao Manilal Akhanev v. State of Bombay, AIR 1956 SC 575; Jaikrishandas Manohardas Desai v. State of Bombay, AIR 1960 SC 889.

⁶Section 405 of the Indian Penal Code, 1860.

⁷Indian Oil Corp. v. NEPC India Ltd., (2006) 6 SCC 736; State of U.P. v. Ram Dass, 1976 Cri LJ 1401.

⁸Section 415 of the Indian Penal Code, 1860.

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with imprisonment of either description for a term which may extend to one year or with fine or both⁹.

Section 418 of the Indian Penal Code, 1860 specifically punishes those in cheating cases who owe a special responsibility to protect the interest of those (either by law or by legal contract) with whom they are transacting. Misuse of trust reposed is punished under this Section. A person who is liable under this Section shall be punished with imprisonment of either description for a term which may extend to three years or with fine or both.

When due to cheating, the person deceived delivers or makes, alters or destroys the whole or any part of a property or valuable security¹⁰ then the person who cheats shall be punished with imprisonment of either description for a term which may extend to seven years and shall also be liable to fine.

- **Forgery**

The essence of the offence of forgery is making of a false document. A person is said to make a false document if he dishonestly or fraudulently signs, seals or executes a document to make others believe that it is under the authority of a person who has not actually made or signed it. A document is a forged document if it is altered after it has already been signed or if another person is dishonestly or fraudulently induced to sign, seal, execute or alter a document knowing it well that such person does not know the contents of the document or nature of the alteration¹¹.

In order to make a person liable for forgery under the Indian Penal Code, 1860 the ingredients are firstly, making of a false document; secondly, the intention of making such document is (i) to cause damage or injury to (a) the public or (b) any person or (ii) to support any claim or title or (iii) to cause any person to part with property or (iv) to cause any

⁹Section 417 of the Indian Penal Code, 1860.

¹⁰Valuable security is a document whereby any legal right is created, extended, restricted, extinguished or released or a document which is liable to be used in a legal proceeding.

¹¹Sections 463 and 464 of the Indian Penal Code, 1860.

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person to enter into any express or implied contract or (v) to commit fraud¹². A person who commits forgery shall be punished with imprisonment of either description which may extend to two years or with fine or with both¹³.

Further, if the forgery is of valuable security then the person shall be punished with imprisonment for life or for imprisonment of either description which may extend to ten years and shall also be liable to fine. If the forgery is for the purpose of cheating then the person shall be punished with imprisonment of either description which may extend to seven years and shall also be liable to fine.

- **Criminal Conspiracy**

Conspiracy is an “inchoate” offence i.e. it is the crime of preparing for or seeking to commit another crime without the need for actual harm to have been done. The gist of the offence lies not in doing the act or affecting the purpose for which conspiracy is formed, nor in attempting to do them, nor in inciting others to do them, but in the forming of the scheme or agreement between the parties¹⁴.

The ingredients of the offence of criminal conspiracy under the Indian Penal Code, 1860 are there should be an agreement between two or more persons who are alleged to conspire; the agreement should be to do or cause to be done illegal act or a legal act by illegal means¹⁵. The punishment for criminal conspiracy is more severe if the agreement is to commit a serious offence. If the offence conspired is punishable with death, life imprisonment or imprisonment for more than two years then the punishment for conspiracy is the same as if the conspirator had abetted the offence. However, if the offence conspired is punishable with less than two years of punishment, then the punishment for such an offence is imprisonment for a term not exceeding six months or with fine or both¹⁶.

¹²Sushil Suriv, CBI, (2011) 5 SCC 708; Zee Telefilms Ltd. v. UOI, (2005) 4 SCC 649; Haryana Financial Corporation v. Jagdamba Oil Mills, (2003) 3 SCC 496.

¹³Section 465 of the Indian Penal Code, 1860.

¹⁴J. W. Cecil Turner, Russell on Crime, Universal Law Publishing Co., Delhi, 2001, p. 202.

¹⁵Section 120A of the Indian Penal Code, 1860

¹⁶Section 120B of the Indian Penal Code, 1860.

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- **Corruption**

Corruption has prevailed in society since time immemorial. In the modern world it has become endemic to the society. The debilitating effects of corruption permeate through all aspects of public life. It not only stifles growth but also perpetuates inequalities, deepens poverty, causes human suffering, dilutes the fight against terrorism and organised crime, and tarnishes the image of the country globally.

The government works through people who are known as 'public servants'. These public servants indulge in corrupt activities and threaten the integrity of government institutions and procedures. The term 'public servant' means any person in service and pay of the government or local authority or corporation established by the government or any person designated to perform 'public duty'. It includes judges, officers of court of justice, office bearers of registered cooperative societies receiving financial grant from government; chairman, member or an employee of any service commission or board; vice chancellor, teacher or employee of any university and office-bearer or an employee of an educational, scientific, social, cultural or other institution receiving financial aid from government¹⁷. It includes President of India, Vice President, Governors, Prime Minister¹⁸ and Ministers and Members of Parliament and State Legislatures¹⁹.

Corruption has multiple channels of expression. It may take many forms and in the Indian context it can be differentiated between petty and grand corruption. Petty corruption is either the collusive or coercive action of a public servant vis-a-vis a member of the public to subvert the system over relatively small transactions. It therefore mostly involves down the line public officials. Grand corruption is the subversion of the system by senior government officials and formations of the political executive, usually in collusion with private sector players.

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¹⁷Section 21 of the Indian Penal Code, 1860 and Section 2 (c) of the Prevention of Corruption Act, 1988. Section 2(c) is wider than Section 21 and includes even those who were earlier not covered under the definition of public servant.

¹⁸M. Karunanidhi v. Union of India, AIR 1979 SC 898.

¹⁹P. V. Narasimha Rao v. State (CBI/SPE), (1998) 4 SCC 626.

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