

INTERNATIONAL JOURNAL OF LAW MANAGEMENT & HUMANITIES

[ISSN 2581-5369]

Volume 6 | Issue 3

2023

© 2023 *International Journal of Law Management & Humanities*

Follow this and additional works at: <https://www.ijlmh.com/>

Under the aegis of VidhiAagaz – Inking Your Brain (<https://www.vidhiaagaz.com/>)

This article is brought to you for “free” and “open access” by the International Journal of Law Management & Humanities at VidhiAagaz. It has been accepted for inclusion in the International Journal of Law Management & Humanities after due review.

In case of **any suggestions or complaints**, kindly contact Gyan@vidhiaagaz.com.

To submit your Manuscript for Publication in the **International Journal of Law Management & Humanities**, kindly email your Manuscript to submission@ijlmh.com.

Key Issues Within the Criminal Justice Profession Which Pertain to White Collar Crimes

HEMANGINI SHEKHAWAT¹

ABSTRACT

When people were living in an uncivilized society there were no cases of criminal justice and the sole solution to every crime could be identified by the phrase "An eye for another eye" or "A life against another life". However, in today's growing crime era, Indian Penal Code (IPC), 1860, deals with matters related to white-collar crime. IPC seems to be the oldest and initial framework whereby provisions related to white-collar crimes were prescribed. IPC governs the provisions related to white-collar crimes and strict punishment and punitive actions are provided therein (Gorasiya and Chudasama, 2021). As society as a whole is developing and growing, the number of crimes is also increasing on a rapid scale. Since the introduction of technological advancement and science revolution, the idea of white-collar crime has gained popularity amongst criminals or individuals intending to do the crime. Such crimes are committed by reputed and known people during the course of their profession or occupation and such people hold a respectable and high-class social status in the community. Though there exist numerous categories of white-collar crime, the most common ones which will be discussed in detail in the given report are frauds involving banks, counterfeiting-related issues, bribery, and most commonly Information Technology (IT) based cybercrime.

The term white collar crime derives from a generalized saying that states that corporate professionals and business executives carry formal suits with white shirts accompanied by ties. The initial complete and defined criminal statutes in the country include the Indian Penal Code (IPC). It additionally addresses a number of white-collar violations, and penalties can be imposed for money laundering, dishonesty, forging paperwork, stealing money and administration tags, violating weights and evaluate laws, adulterating medicines and food, stealing from the general population, unlawful violation of confidence, and misappropriating assets belonging to the public. Additionally, it psychologically isolates such offenses as well as their perpetrators from other kinds of wrongdoing, which are allegedly more probable to have been perpetrated by "blue collar" employees.

¹ Author is a LL.M. Student at Amity University, Rajasthan, India.

I. INTRODUCTION

When people were living in an uncivilized society there were no cases of criminal justice and the sole solution to every crime could be identified by the phrase "An eye for another eye" or "A life against another life". However, in today's growing crime era, *Indian Penal Code* (IPC), 1860, deals with matters related to white-collar crime. IPC seems to be the oldest and initial framework whereby provisions related to white-collar crimes were prescribed. IPC governs the provisions related to white-collar crimes and strict punishment and punitive actions are provided therein (Gorasiya and Chudasama, 2021). As society as a whole is developing and growing, the number of crimes is also increasing on a rapid scale. Since the introduction of technological advancement and science revolution, the idea of white-collar crime has gained popularity amongst criminals or individuals intending to do the crime. Such crimes are committed by reputed and known people during the course of their profession or occupation and such people hold a respectable and high-class social status in the community. Though there exist numerous categories of white-collar crime, the most common ones which will be discussed in detail in the given report are frauds involving banks, counterfeiting-related issues, bribery, and most commonly Information Technology (IT) based cybercrime.

The term white collar crime derives from a generalized saying that states that corporate professionals and business executives carry formal suits with white shirts accompanied by ties. The initial complete and defined criminal statutes in the country include the Indian Penal Code (IPC). It additionally addresses a number of white-collar violations, and penalties can be imposed for money laundering, dishonesty, forging paperwork, stealing money and administration tags, violating weights and evaluate laws, adulterating medicines and food, stealing from the general population, unlawful violation of confidence, and misappropriating assets belonging to the public. Additionally, it psychologically isolates such offenses as well as their perpetrators from other kinds of wrongdoing, which are allegedly more probable to have been perpetrated by "*blue collar*" employees.

II. LEGAL PROVISIONS

Some of the major legal governing provisions as provided in the IPC concerning matters related to white-collar crimes are as follows:

- Provisions of **Section 205** state false or misleading personation in a court hearing or throughout an ongoing legal proceeding.
- Provisions of **Section 420** state that involved in fraudulent activity or influencing an

individual to hand over assets or properties having dishonest and wrong intentions.

- Provisions of **Section 464** deal with matters related to improper and false information along with documents.

White-collar crimes are additionally committed in order to provide for loved ones as well as one's personal necessities (Trombini, 2023). However, a particularly significant factor is the way individuals with a good reputation desire to nourish their self-worth.

Below mentioned are a few reasons which clarify the situation of white collars criminals not getting punished for the offenses committed them:

- Lawmakers and those who carry out legislation fall under the identical category as professional criminals.
- Law enforcement officials devote a lesser amount of time to investigations given that they consider the work difficult and stressful, and frequently such perplexing investigations don't yield positive outcomes.
- The regulations have been drafted in a way that exclusively benefits professional criminals.
- The judicial system was frequently condemned for rendering verdicts too slowly. Occasionally the person being charged is already long gone away by the moment the magistrate renders its decision (Payne, 2021). As a result, offenders are free to perpetrate offenses. Although white-collar crimes continue to rise more quickly, the legal system has to speed up the delivery of decisions.

White-collar crimes typically involve the following:

- The rules are ignored in the course of action.
- It happens either directly or indirectly with respect to legal employment.
- The goal is to make revenue.
- The offense is not carried out against one specific individual or enterprise, but instead towards society as a whole. Consequently, no single sufferer would raise an objection.
- Formerly "anyone with affluent rank" performing such an offense was regarded as a (white collar) crime; however, today, "a person of any social standing breaching the law (as opposed to one who performs an illegal or immoral conduct) in an act of industrial engagement" is referred to simply as an occupational criminal.
- Participation in white-collar offenses typically has big benefits yet presents a very

minimal threat of being captured and identified. Additionally, it is a particularly minor crime that those who are hurt are most unlikely to fight back against.

- The criminal sees themselves not as an offender but rather as an infringement of law whose actions have no consequences.
- Those who engage in prohibited employment practices establish an approach to manipulating cases. Political leaders, administrators, and other prominent people are utilized as well for "security," in addition to law enforcement officials.
- This offense's impact on humanity is significantly more severe than that of a conventional crime.

Judgment is postponed because there are numerous cases that remain unresolved in court. The phrase states, "Justice postponed is justice denied." Around 4.7 crore issues are still waiting in the courtroom, according to the reports for 2022. Consequently, there is a requirement for modifications to regulations, and the legal system for crime requires putting more importance on timely trial and fair treatment (Sagar, 2019). The issue of overloading prisons in the whole country is aggravated by a significant amount of unexplored criminals. Reports from 2020 indicate that convicts awaiting trial makeup 70% of the jail population. According to *Article 21* of the Constitution, this additionally violates the fundamental right to life.

The inadequate number of magistrates in Indian courts weakens the judicial system as more cases remain pending, which adds to the problem of a judge shortfall. Additionally, there are currently 19 judges in the entire nation, which indicates a severe shortage, based on figures and studies. The system of criminal justice is ineffective because of fraud and the impact of politics on the judicial branch. As a result, an innocent individual ends up spending their entire life in prison and a defendant quickly escapes legal responsibility.

Advocates frequently submit fraudulent proof and fraudulent witnesses in the tribunal in exchange for payment or additional assistance from the people they represent. Legal experts who have support from the government participate in illegal conduct and violate all of their moral requirements in exchange for monetary compensation (Dodge, 2020). By using proficient evidence, the investigation can be changed around by altering the proof and faking testimony, which usually ends in the release of the true culprit and the imprisonment of the innocent party.

Some of the most common categories of white-collar crimes are provided below:

Bank fraud

When someone stealthily removes funds or property through a financial institution, this is

known as fraudulent activity at a bank. Scam additionally occurs if an individual impersonates a corporation of banking or other monetary company while taking funds or other valuables from those who are harmed.

Bribery

Bribery involves an instance of white-collar offense whereby one party solicits another party's cooperation with the expectation of either funds, assistance, or an item of importance (Desai, 2020). Bribery could happen, for instance, if any administrative official demanded alcohol before allowing someone to cast a ballot.

Cybercrime

The quantity of criminality associated with computers and web browsing continues to rise along with their consumption. Cybercrime is an umbrella term for offenses that entail both the accessibility of computer equipment and an internet connection. It occurs when an electronic device is employed as an innocent bystander of a criminal act or to serve as a means of committing one. An act specified particularly for cybercrime namely *the Information Technology Act of 2000* has become the sole piece of federal law that covers crimes concerning cyberattacks (Chudasama et al., 2020). Since it is impossible to describe an offense of this sort when computers and the global web are part of it, an accurate description of cyberattacks is not contained in any law decisions or regulations.

Counterfeiting

Pursuant to the provisions of *Section 28* of IPC defines counterfeiting is an imitated version of an object that is real with the intent to acquire, obliterate, or substitute for the genuine creation of another person. It makes it easier to make money through fraudulent company activities, therefore, fooling an individual who thinks the claims being presented to them are legitimate therefore the imitation effort proves more valuable.

Analysis with International Arena

The primary obstacle facing the international justice system right now is how people think that it is a tool used by strong Governments against weakened less prosperous, and more distant governments and populations. Several of these big, powerful countries have actually performed heinous wrongdoings that went unsolved (Shah, 2019). For instance, the United States highly supports initiatives to bring Hissène Habré to court in Senegal according to the Torture Convention, whereas its governing body has pledged immunity to American politicians and military personnel liable for abusing prisoners at Abu Ghraib, Guantanamo, and other places.

States have to address their dissatisfaction with the justice system for criminals on an international scale. Countries' agendas regrettably seemed to have evolved after the anticipation that made the "Pinochet Saga" potential and eventually led to the creation of the Global Criminal Tribunal; this issue is not uncommon during periods of economic trouble or broad surveillance. Countries, including the "third" or "bystander" nations functioning under the principles of global jurisdiction, have and always will serve as the foundations of the world's criminal justice framework. Through establishing prerequisites for complementary and equality for it is important to rethink their role specifically within the worldwide criminal justice framework.

The international legal system has had a variety of social and political implications throughout the last few decades in nations and communities wherever it has clashed, either immediately by inquiries and proceedings or informally by the fear of inquiries. The connection of national and global equity, however, remains in the early stages in the framework of international law. International actions are still uncertain since they are separated from the larger socioeconomic problems that form the basis of social objectives in crisis and following the conflict environments (Rorie, 2019). The basic elements involve the procedure of incorporating global ideas into domestic affairs and, most importantly, the 'translation' of fairness into regional ideas, languages, or customs that remain in their infancy.

III. CASE LAWS

State of Gujrat V/s Mohanlal Jitamalji Porwal & Anr²

The judiciary is unable to hear an appeal on the matter regarding if the relevant authority seized the item in the "justifiable belief" that the products were illegal. The judge dismissed the request on the basis that, given the offense meant for six-year timeliness, it was not "expedient in the best interests of fairness to provide an additional field of evidence." In an era wherein judicial delays are normal and the manner in which things are conducted, the simple fact that six years had passed a period of time for which the accused held no responsibility was insufficient justification to refrain from acting to further the interests of fairness.

Consequently, it was completely improper for the judiciary to deny the knowledgeable Assistant Public Prosecutor's demand to use its power pursuant to **Section 391** of the Code of Criminal Procedure. According to the assessment of the circumstances and the facts of the situation, the petition must have been accepted with the goal of obtaining honest complete justice.

² Criminal Appeal No.74 of 1978

SEBI v. Burman Plantation and Others³

Prior to the High Court of Allahabad, an experienced lawyer for SEBI argued that the organization is being falsely charged since it was unable to fulfill its obligations, including obligations to its investors. Whenever the business's marketing material was questioned, the commission responded that the advertisement had been published in 2003 and the order had been made in 2004, both years in which the organization was unable to pay back its responsibilities (Rothe and Kauzlarich, 2022). Furthermore, the quantity of money that the shareholders were seeking was never disclosed. The major argument of the attorney prompted lawmakers to alter the legislation in accordance with *section 24(1)* of the SEBI Act, increasing the penalty from a period of one year to 10 years plus increasing the penalty, which could eventually reach 25 crores. Finally, Ravi Arora, the accused, was found guilty.

Binod Kumar & Ors v. The State of Jharkhand & Others⁴

Various Jharkhand state ministers, including the chief minister, have been identified as suspects in this lawsuit for holding unreported funds. Making use of the authority granted to it by *Section 45 (IA)*, the High Court had asked the Central Government to transfer the matter from the Enforcement Directorate to the CBI. A stringent inquiry has been suggested despite an absence of evidence supporting the money laundering allegations against the government officials who were allegedly in control of significant amounts of funds. It had been alleged that the politicians had properties not just in India but also internationally (Gottschalk, 2020). In order to figure out if this money was obtained through exploiting a government position, the judge demanded an inquiry. It was necessary to determine whether a crime had been performed under both IPC and the *Prevention of Corruption Act, of 1988*. The CBI began investigating under the Prevention of Corruption Act, 1988 and the IPC because only the Enforcement Directorate had the authority to conduct examinations under the Prevention of *Money Laundering Act*, which was obviously subject to the authority granted to the Central Government under *Section 45 (I-A)* of the Prevention of Money-laundering Act.

IV. CONCLUSION

The justice system for criminals is an umbrella that regulates the operations of agencies like police, penal facilities, tribunals, and so forth which function to provide sufferers justice. Preserving stability and peace within the community is the responsibility of the government, and this can only be done with a strong judiciary and a criminal justice system that is efficient.

³ 1 August 2013

⁴ 24 July 2012

Although several changes have been introduced to the regulations, the British East India Company was primarily liable for enacting the criminal regulations in India. The federal government believes that the judicial system needs to be changed in order to address new crimes that are emerging as a result of temporal and technological advancements, like organized fraud, white-collar crime, digital crimes, and so forth.

However, multiple government-established bodies provided numerous comments and suggestions. However, the situation remains unchanged. The growing number of cases that are brought on by the lack of magistrates is still putting strain on the judiciary. The public as a whole believes that law enforcement agencies are dishonest and have been unable to perform their jobs due to interference from politicians. On a daily basis, there are a growing number of cases of rapes in prison and deaths. The wider population becomes scared as a consequence. Prisons experience overpopulation, and convicts get inhumane and brutal torture. The recommendations made by numerous committees have been put down, however, are not efficiently carried out. Further, Indian criminal justice system to deliver equal treatment, all of its shortcomings and loopholes must be addressed.

V. REFERENCES

- Gorasiya, S. and Chudasama, D., 2021. White Collar Crime in Indian Context. *National Journal of Cyber Security Law*, 4(2), pp.1-7p. https://www.researchgate.net/profile/Dhaval-Chudasama/publication/357835747_White_Collar_Crime_in_Indian_Context/links/61e1bf9f5779d35951aa3290/White-Collar-Crime-in-Indian-Context.pdf
- Trombini, M.E., 2023. *Legal Professionals in White-Collar Crime: Knowing, Thinking and Acting*. Springer Nature. https://books.google.co.in/books?hl=en&lr=&id=ikOwEAAAQBAJ&oi=fnd&pg=PR5&dq=criminal+justice+profession+which+pertain+to+white+collar+crimes+in+India&ots=2bNQwXGc_n&sig=SGg_zl3ieJuAc6zTuMdFckwqdhs&redir_esc=y#v=onepage&q=criminal%20justice%20profession%20which%20pertain%20to%20white%20collar%20crimes%20in%20India&f=false
- Payne, B.K., 2021. *White-collar crime: A systems approach*. SAGE Publications. https://books.google.co.in/books?hl=en&lr=&id=x0snEAAAQBAJ&oi=fnd&pg=PT15&dq=criminal+justice+profession+which+pertain+to+white+collar+crimes+in+India&ots=QFA3dII4E7&sig=X2VFfVEQFSEgFbS4dHm8fd-pvBQ&redir_esc=y#v=onepage&q&f=false
- Sagar, A., 2019. The Concept of White-Collar Crime: Nature, Causes, Political and Legal Aspects in Accountability and Way Forward. *Journal of Political Studies*, 26(1). http://pu.edu.pk/images/journal/pols/pdf-files/10-v26_1_19.pdf
- Dodge, M., 2020. A black box warning: The marginalization of white-collar crime victimization. *Journal of White Collar and Corporate Crime*, 1(1), pp.24-33. <https://journals.sagepub.com/doi/pdf/10.1177/2631309X19888501>
- Rothe, D. and Kauzlarich, D., 2022. *Crimes of the Powerful: White-collar Crime and Beyond*. Taylor & Francis. https://books.google.co.in/books?hl=en&lr=&id=1xRoEAAAQBAJ&oi=fnd&pg=PT15&dq=criminal+justice+profession+which+pertain+to+white+collar+crimes+in+India&ots=WP0RFzin8d&sig=rfXxhyH2SNPn8L01cw476CgXcXY&redir_esc=y#v=onepage&q&f=false
- Desai, N., 2020. Understanding the theoretical underpinnings of corporate fraud. *Vikalpa*, 45(1), pp.25-31. <https://journals.sagepub.com/doi/pdf/10.1177/0256090920917789>
- Chudasama, D., Patel, D., Shah, A. and Shaikh, N., 2020. Research on Cybercrime and its Policing. *American Journal of Computer Science and Engineering Survey*, 8(10),

p.14. https://www.researchgate.net/profile/Dhaval-Chudasama/publication/350486308_Research_on_Cybercrime_and_its_Policing/links/6062dd00a6fdccbfea15e1d9/Research-on-Cybercrime-and-its-Policing.pdf

- Shah, R., 2019. Cyber Crimes in India: Trends and Prevention. *International Journal of Research and Analytical Reviews (IJRAR)*, 6(1). <https://www.ijrar.org/papers/IJRAR1ABP006.pdf>
- Rorie, M.L., 2019. *The handbook of white-collar crime*. John Wiley & Sons. https://books.google.co.in/books?hl=en&lr=&id=_SyqDwAAQBAJ&oi=fnd&pg=PA8&dq=white+collar+crime+at+international+level&ots=mRZL0bv4NV&sig=s9cLfiYYltNXkG8Z3kOqYrqZTNY&redir_esc=y#v=onepage&q=white%20collar%20crime%20at%20international%20level&f=false
- Gottschalk, P., 2020. Private policing of white-collar crime: case studies of internal investigations by fraud examiners. *Police practice and research*, 21(6), pp.717-738. <https://www.tandfonline.com/doi/full/10.1080/15614263.2020.1789461>
