ISSN: 2582 - 2942

LEX FORTI

LEGAL JOURNAL

VOL- I ISSUE- III

APRIL 2020

ISSN: 2582 - 2942

DISCLAIMER

ISSN: 2582 - 2942

EDITORIAL BOARD

ISSN: 2582 - 2942

EDITORIAL BOARD

ISSN: 2582 - 2942

ABOUT US

LexForti is a free open access peer-reviewed journal, which gives insight upon broad and dynamic legal issues. The very objective of the LexForti is to provide open and free access to knowledge to everyone. LexForti is highly committed to helping law students to get their research articles published and an avenue to the aspiring students, teachers and scholars to make a contribution in the legal sphere. LexForti revolves around the firmament of legal issues; consisting of corporate law, family law, contract law, taxation, alternative dispute resolution, IP Laws, Criminal Laws and various other Civil issues.

Need for a Separate Enactment to Curb White-Collar Crimes in India

Viola Rodrigues

ABSTRACT

White-Collar crimes often occur in corporations that are large and complex. These crimes are committed by people with a strong understanding of disciplines of economic, governance, informatics, medicine, etc. In most of the cases, the harm caused by White-Collar crimes is deeply grave in nature. In White-Collar crimes, there is moral sophistication and ambiguity that is not perceptible in other crimes. It is very difficult to identify victims and victimization is unknown. White-Collar crimes are on the increase as technology and education rows, such as the Internet and fast-moving money systems. Law enforcement is often reticent to prosecute such cases as they are so difficult to monitor and investigate. White-Collar crimes have a greater impact on society than other crimes usually has. Legislators and the law enforcement officers belong to the same group of White-Collar criminals and this paves away for a major drawback in curbing the White-Collar crimes. The judiciary is equally blamed for delaying justice. Thus this paper critically examines the concept of White-Collar crime prevailing in India and its impact on Indian society. The paper thus reflects the loopholes in the existing laws prevailing to curb White-Collar crime in India and in later part the paper comes with a solution of consolidating all the provisions relating to White-Collar crimes either directly or indirectly of existing legislations in India into one single piece of legislation dealing solely with the function of curbing White-Collar crimes in India.

Keywords: Criminals, India, Judiciary, Law, White-Collar crimes.

TABLE OF CONTENTS

INTRODUCTION

White-Collar Crimes are a worldwide phenomenon to which India is no exception. The White-Collar Crimes Study conceptualizes the current situation of widespread socio-economic crimes in India. The emergence of these offences is in fact elusive, as the law and its implementing authorities tend to fail to demonstrate governance and its legitimacy to the satisfaction of ordinary individuals in general.

It seems to be an accepted reality of common knowledge that some businesses, occupations and professions with direct or indirect connections to some authority or status have long provided possibilities for violations of the rule of law in India. Such violations result in numerous socio-economic crimes that often do not attract government attention nor public attention in our nation owing to extensive poverty, illiteracy and widespread corruption in nearly all governance bodies / agencies owing to their systematic failure in this regard. Perhaps in the context of American society, a well-known criminologist, Sutherland, abstracted "White-Collar crimes," which tend to have a demoralizing impact on India's overall crime image. Any statement or grievance against such business or occupation/professional tactics often goes unheard and unpunished to the benefit of violators as the money power and status lies in the very own hands of violators. But people understand very little about the trickery and even if they understand, there is apathy in them for the issue and as enormity because the legal fights concerning such offences have been dragging in courts for the years. Consequently, the accusation against the offenders are elapsed long before the accusations are effectively resolved. The fact there are laws in major which indirectly facilitate to curb these White-Collar crimes and in minority some which directly linked to curbing of these offences. But the main problem is lack of enforcement of such existing laws which curbs White-Collar crime in India. Thus this research paper will focus on the loopholes in the existing laws relating to White-Collar crime in India and comes up with a suggestion of enacting a separate enactment regarding White-Collar crime and coming with efficient enforcement Mechanisms.

NATURE AND DEFINITION OF WHITE- COLLAR CRIME

The main criteria to be "White-Collar" for a crime is that such a crime happens as part of the job role of the violator. Apparently, this is more important than the type of law that has been infringed or the comparable prestige of the infringer, although these factors have intrinsically become major issues in the controversy over the White-Collar, firstly because most of the laws concerning are not part of the traditional criminal code, and secondly because most of the

infringers are a snip above the ordinary criminal in social standing[1]. Penal code often tries occupational crimes such as misappropriation of money, forgery, tax evasion etc. In the same way farmers, repairmen, participate in non-white collar occupations but are categorized as White-Collar violators for offences such as watering of consumption milk, making unnecessary 'repair' on television sets etc., respectively. Furthermore, people of high-profile white-collar occupations who are committing criminal offenses, such as murder, theft, rape and the like, would not even be white-collar criminals[2]. All this adds confusion to the concept of White-Collar crime and thus it was in the year 1949 a clear picture of White-Collar crime was brought into limelight by Professor Sutherland in his address to the American Sociological Society.

Sutherland defined White-Collar crime as *"crime committed by a person of respectability and high social status in the course of his occupation"*[3]. Eventually, he seems to have redefined definition by identifying White-Collar criminal as *"a person of the upper socioeconomic class who violates the criminal law in the course of his occupational or professional activities"*[4]. He noted out that white crime was more harmful to society than normal offenses, *firstly,* because there were greater financial losses, and, *secondly,* because of the harm to public morality[5].

With regard to the harm to morals and institutions, Sutherland argues that the financial loss is less crucial than the harm to social relations, as it generates distrust, reduces morality, and generates large-scale disorganization[6]. On the other side, it is said that the social harm caused by normal crime affects our institutions and social organizations comparatively little[7].

TYPES OF WHITE-COLLAR CRIME

The main crimes that have attracted attention in the US under the head of white-collar crimes may be summarised as follows:

1. Frauds in business in relation to sale of bonds and investments;
2. Adulteration of foods and drugs and misleading advertisements;
3. Malpractices in the medical profession, such as illegal sale of alcohol and narcotics, abortion, illegal services to underworld criminals, fraudulent reports and testimony in

[1] Donald J. Newman, *White-Collar Crime*, 23 Law & Contemp. Probs. 735 (1958).
[2] *Id.*
[3] AHMAD SIDDIQUE, CRIMINOLOGY, PENOLOGY & VICTIMOLOGY, (7ed., Eastern Book Company 2016).
[4] Law Commission Report, No.29 (1996) 6.
[5] SIDDIQUE, *Supra* Note 3.
[6] *Id.*
[7] *Id.*

accident cases, extreme cases of unnecessary treatment, fake specialists, restriction of competition and fee splitting;

4. Crimes by lawyers, such as guiding criminal or quasi-criminal activities of corporations, twisting of testimony to give a false picture, fake claims (bogus liability in accidents), etc;
5. Trusts, cartels, combines, syndicates, etc. formed to combat competition, or to raise prices or otherwise to interfere with the freedom of trade to the detriment of honest businessman or the consuming public. This has now become a branch of law by itself and is usually dealt with under the topic of "anti-trust legislation";
6. Bribery and graft by public officers[8].

GROWTH OF WHITE-COLLAR CRIMINALITY

The Economic and Industrial sector of the many countries have influenced the growth of White-Collar criminality. The reason for the same can be stated that there are high possibility of having a direct or indirect relationship of White-Collar crimes with the production and distribution of wealth[9].

Writing about the various factors which have contributed substantially to White-Collar criminality, Friedmann makes the following observations:

"The Industrial Revolution had initiated great social changes of far-reaching consequences. The changes in the economic and social structure of property, comprising the transformation of an increasing proportion of wealth from property in tangible, visible and mainly immovable goods into ownership in intangible and invisible powers and rights such as shares, trade marks, patents and copyrights, coincided with the growth of large-sized corporations replacing individual entrepreneurs. This development, inter alia, led to concentration of economic and consequent political power in a few hands, absentee ownership and impersonal monopoly, emphasis on money and credit and decline in the sense of social responsibility on the part of owners of large property[10]".

The law Commission has also noted the various factors responsible for the growth of White-Collar criminality in the following words:

"The advance of technological and scientific development is contributing to the emergence of 'mass society', with a large rank and file and a small controlling elite, encouraging the growth of monopolies, the rise of a managerial class and intricate institutional mechanisms. Strict adherence to a high standard of ethical behaviour is necessary for the even and honest functioning of the new social, political and economic processes. The inability of all sections

[8] Taft and England, *Criminology,* 200.
[9] SIDDIQUE, *Supra* Note 3.
[10] Friedmann, *Law in a Changing Society,* (1951) 186.

of society to appreciate in full this need results in the emergence and growth of White-Collar and economic crimes[11]".

The two world wars have made a substantial contribution to White-Collar crime. Due to the scarcity of things and mounting demands, the traditional mores and ethical constraints were profoundly impacted. With the independence of India and the advent of a proclaimed welfare state in the country, the end of World War II almost coincided. The government tends to regulate a wide range of ways to produce and distribute goods and material services in a welfare state. If such regulations and checks are in the interests of the community, it is true that government checks provide a fertile source of White-Collar crime in a society infesting chronic poverty, corruption and pervasive inefficiencies in State management[12]

It is evidently mentioned in the Indian constitution regarding the states obligations towards ownership and distribution of national wealth and resources in the following words: *The State shall in particular direct its policy towards securing that the ownership and control of the material resources of the community are so distributed as best to sub serve the common good; that the operation of the economic system does not result in the concentration of wealth and means of production to the common detriment[13]*.

The above philosophy led to the various regulatory legislations, a breach of those regulations giving a tremendous fillip to white-collar criminality in India[14].

Over the last 30 years, the country has witnessed the execution of numerous Five-Year Plans involving enormous government expenditure on various nation-building activities. But at the same time it was biggest advantage to the corrupt officers, businessmen and contractors. The advantage is stated herein that there is acceptance of the fact of development and progress in the country due to the Five Year plans but a large amount of money meant to be utilised for the developmental projects has been pocketed by White-Collar criminals[15].

---

[11] Twenty-ninth Report, Law Commission of India (1966) 3.
[12] SIDDIQUE, *Supra* Note 3.
[13] INDIA CONST. art. 39, cl. b.
INDIA CONST. art. 39, cl. c.
[14] Some of the relevant statutes are: Essential Commodities Act, 1955; Industrial (Development and Regulation) Act, 1951; Imports and Exports (Control) Act, 1947; Companies Act, 1956; Foreign Exchange (Regulation) Act, 1973; Central Excise and Sale Act, 1944; Income Tax, 1961; Customs Act, 1962.
[15] SIDDIQUE, *Supra* Note 3.

ANTI-WHITE-COLLAR CRIMES LEGISLATION: PROBLEM OF ENFORCEMENT

White-Collar offenders have already been reported to be much more dangerous to society than common criminals or blue-collar criminals. The question then arises as to why many White-Collar criminals go unpunished? According to Sutherland, the White-Collar criminals are given special treatment because of their high socio-economic status, the remedial philosophy of the laws in question and the relatively unorganised resentment of the public against White-Collar crimes[16]. The reasons for the absence of such resentment were stated to be as follows:

1. The White-Collar crimes are very complex in nature and violations of law in such cases is also multifaceted and can be valued only by experts.
2. Public communications agencies (such as the press) do not communicate the community's collective moral feelings, partially because the offenses are complex and cannot easily be portrayed as news, but perhaps to a greater extent because these information agencies are themselves owned by businessmen interested in the violations of many of these laws.
3. The laws governing business and its regulation are part of a comparatively new and specialized section of the statutes[17].

As to the reasons why such crimes went unpunished, Sutherland made the following observations:

"The difference in the implementation of the criminal law is due principally to the difference in the social position of the two types of offenders. Because of their social status, implementation of the criminal law in relation to White-Collar criminals becomes difficult. They are more powerful than the traditional criminals. Consumers, investors and stockholders are unorganised, lack technical knowledge and cannot protect themselves. White-Collar crime goes undetected because it transcends the visibility of ordinary cheating practices of small merchants"[18].

Another obstacle to the prosecution and punishment of White-Collar criminals is that, apart from the fact that the public is not only oblivious to such violations of the law, the citizens themselves contribute quite often to the execution of various crimes of White-Collar crimes [19]. In other words, the "victims" of the crimes are also to blame tor White-Collar criminality. Many of these offenses can not necessarily be committed without demand for unlawfully producing

[16] *Id.*
[17] *Id.*

[18] *Id.*
[19] *Id.*

goods and services in a society. Black marketing and illegal gratifications to public servants are some of the common examples.

In the end, another factor is deemed responsible for the non-punishment of White-Collar crime, or for inadequate punishments concerning the same. Judges of the court typically belong to the upper classes of society and they may knowingly, or otherwise, determine their approach to White-Collar criminals, who also belong to the same social classes [20].

White-Collar Crimes are different in nature and execution from ordinary crimes pose unusual difficulties with respect to the identification, enquiry, prosecution and conviction of such crimes because of the aforementioned nature of crimes. Henceforth there is a need for good law enforcement and specially trained staff to identify and prosecute these crimes [21]. The trend is now to separate investigating and public prosecution agencies from the traditional practice of assigning both tasks to the same agency because of the different kind of challenge that rises in this regard. However, this can only give the optimal benefits if the two aforesaid agencies are well coordinated.

The next problem is court process and the substantive and procedural aspects of the law governing it. The issue regarding the same has created some controversy. It has been argued that socio-economic crimes must be handled by specialised agencies or special tribunals especially established for curbing such crimes or quasi-judicial bodies which may not be fettered by some of the unnecessary, old and disabling features of ordinary criminal law[22]. This new approach helps to secure grater efficiency and effectiveness with respect to same. On the other hand, concerns have been raised that such forums may not be immune from the influence of the government's executive branch, and thus may not command the general public's confidence.

In India, the crime statistics given in *Crime in India,* compiled by the bureau of Police Research and Development, Ministry of Home Affairs, provide hardly any information regarding the extent of White-Collar criminality in the country. The only possible sources, therefore, are the reports of the Government of India and the findings of the various tribunals and commissions dealing with White-Collar crimes. Recently it has been observed that the higher officials of the government itself are found involved in White-Collar criminality. The various financial scams like 2G scam, coal block scam, fodder scam are some of the example in which money worth

[20] *Id.*
[21] *Id.*
[22] *Id.*

crores of rupees has taken away even by the Ministers. All these cases are either being probed by the CBI or pending before the courts for trial[23].

One possible approach is to retain the jurisdiction of ordinary criminal courts but to do away with some of the over-indulgent provisions of criminal law in the context of White-Collar crimes. As a result of the recommendations of the Santhanam Committee some of the relevant laws were amended on these lines. These amendments provide greater powers for investigating agents and the judiciary and summary trials are also possible for some of the offences. The law has also been made slightly less benevolent to accused persons by incorporating certain presumptions against them under certain circumstances. Under Section 4, Prevention of Corruption Act there is a presumption, for instance, that money received other than legal remuneration by a public servant is an illegal gratification[24].

ANALYSIS OF SPECIFIC LAWS ON WHITE COLLAR CRIME

Sutherland also included offenses committed by corporations and other legal entities within the scope of his definition. Forgery, tax-evasion, Cyber Crimes, money laundering, food and drug adulteration, counterfeiting, corruption etc are the primary classifications of White-Collar crimes. India's first comprehensive and codified criminal law is the Indian Penal Code of 1860. But India's social and economic structure has transformed so widely that the code does not fulfil the requirements of today in many ways. This paper is limited mainly only to the analysis of legislations which solely dealing with the aforesaid types of White-Collar crimes. The analysis shall include the Prevention of Corruption Act 1988, The Prevention of Money Laundering Act 2005, Information Technology Act, 2002 and Indian Penal Code, 1860.

A. The Prevention of Corruption Act, 1988.

In India, corruption is an all-pervasive phenomenon and as some truly believe corruption has become a way of life in country like India[25]. *Corruption can be defined as departure from what is pure or correct from the original*[26]. *Corruption retards our country's growth and welfare to the maximum extent*[27]. Its magnitude has considerably risen. The Prevention of Corruption Act, 1988 is the substantive law

[23] *Id.*
[24] *Supra* Note 3.
[25] Bhagwan, Vishnu, *Corruption & Good Governance,* 68, The Indian Journal of Political Science. (2007).
[26] P. Ramanatha Aiyar, The Law Lexicon 414 (2010).
[27] Mota Ram v. State of Haryana, A.I.R. 2010 S.C. 3780 (India).
State of Madhya Pradesh v. Ram Singh, A.I.R. 2000 S.C. 870 (India).
Subramanian Swamy v. Manmohan Singh, (2012) 3 S.C.C. 64 (India).

dealing with corruption in India. This refers to all categories of "public duty" defined as a "obligation in which the State, the ordinary citizen, has an interest in large. Ultimately, in a purely legal sense, corruption is mainly described as an action involving a public servant taking unlawful gratifications other than legal pay for an official act[28].

The offense involves the acceptance, or agreeing to acknowledge or reward for doing or abstention of any official act or showing or abstention to demonstrate favor or disadvantage to any person in the exercise of his office or to render or try to render service or disadvantage to any person[29]. Other offences included ownership of property incompatible with recognized revenue sources, mistreatment or abuse of formal roles, etc. Compliance with any of the offenses has also been described as an offense[30].

Corruption is one of the White-Collar crimes generally committed by high-ranking officials and individuals who are officials of government. The aforementioned legislation relates exclusively to curbing corruption in India. But there are some loopholes in this legislation that make it easy for White-Collar offenders to go unpunished.

The procedure under this act is extremely slow, and punishment is not effective and intense. The Prevention of Corruption Act only requires special judges to try corruption cases pursuant to the Act. The number of special judges is extremely inadequate compared to the volume of cases brought before their courts regarding corruption. This legislation, however, was enacted to address public sector corruption and by public servants, where there is, as in reality, rampant corruption in the private sector, which also significantly impedes real growth and progress in the country. Corrupt officials also buy property on behalf of their families, associates, colleagues and other acquaintances with stolen money. Therefore, it is not easy to prove in court that these properties are the result of crime. Such properties are often kept under strict privacy laws in foreign countries and are not easily tracked and retrieved, especially as global collaboration is not necessary. Thus the aforesaid act suffers from many loopholes resulting in failure of complete implementation.

B. The Prevention of Money Laundering Act, 2005.

[28] Vishnu, *Supra* Note 25.
[29] *Id.*
[30] *Id.*

Money Laundering has become one of contemporary tremendous moral panic[31]. Money Laundering is *"the process by which one conceals the existence, illegal source, or illegal application of income, and disguises that income to make it appear legitimate."*[32]

Section 3 of the Prevention of Money Laundering Act, 2002 defines money laundering as whosoever directly or indirectly attempts to indulge or knowingly assists or knowingly is a party or is actually involved in any process or activity connected proceeds of crime including its concealment possession, acquisition or use and projecting it as untainted property shall be guilty of offence of money Laundering. Money Laundering is therefore not an independent crime; it relies on another crime (predicate crime), the proceeds of which are the focus of money laundering crimes.

Money Laundering can be viewed from two different points of view which is money laundering within the country and the money laundering in international realm. As far as cross-border money laundering is concerned, India's traditionally strict foreign-exchange regulations and reporting standards have greatly contributed to the international forum's regulation of money laundering. Prevention of Money laundering Act is a comprehensive legislation relating to curbing of money laundering and related activities. Apart from that the aforesaid legislation deals with the, confiscation of proceeds of crime, setting up of agencies and mechanisms for coordinating measures for combating money laundering etc., Thus Prevention of Money Laundering Act plays a very important role in curbing one of the said socio-economic crime i.e, Money laundering at national level.

There are many problem areas in the aforesaid act. Some of are addressed in this research paper. In addition to helping the common man, the rise of technology has also proved a boon for these money launderers, and India is no exception to this. In this developing economy cyber finance is the growing concept. The enforcement agencies have failed in curbing these cybercrimes at much faster rate because the growth of the technology is not matched up with the adaptation of the new technology and its much speedier growth. As seen earlier, money laundering has now become complex, and is linked not only to NDPS instances, but also to many areas of operation. Separate wings of the law enforcement agencies are dealing with digital crimes, money laundering, economic offences and terrorist crimes. There is no convergence between the agencies but the criminals have. Criminals work in a borderless world, but one state's police are still struggling with procedures to arrest a person residing in another state.

---

[31] Alldridge, Peter, *Money Laundering and Globalization*, 35 J Law Soc. 435 (2008).
[32] *Money Laundering*, 42 Am. Crim. L. Rev. 699 (2005).

C. Information Technology Act, 2002.

The society has been greatly advantaged with the development of science and technology. The new scientific technology is the invention of computers. The new technology has positive as well as negative impacts on society. Mankind's rapid progress is the result of the adoption of computing technology. We consider that information technology and computers have grown rapidly over the past 50 years, and have dominated every area of human civilization. The growth in computer technology has also influenced the crime world. Computer provided the latest ways and means of breaking the law and a new type of crime in society appeared. These crimes related to computers are called cybercrimes. These crimes are causing considerable loss to the economy and human security.

Internet's rapid growth has created new possibilities in every area we can think of — be it entertainment, industry, sports or education. In addition, the Internet and its myriad benefits have exposed us to security risks that arise from a large network link. Computers are being misused today in the form of illegal activities such as e-mail hacking, credit card fraud, spamming, software piracy. In cyberspace, criminal activity is on the increase.

The Indian parliament considered it necessary to give effect to the resolution by which the General Assembly adopted Model law on Electronic Commerce adopted by the United Nations Commission on Trade Law. As a result, on 17 May 2000, the IT Act of 2000 was introduced and implemented.

The main object of the Information Technology Act 2000 is to provide legal recognition for transactions carried out by means of electronic data interchange and other means of electronic communication, commonly referred to as "electronic commerce", which involve the use of alternatives to paper-based methods of communication and storage of information, to facilitate electronic filing of documents with the Government agencies etc., In a moment when there was no legislation in this specialized technological field, without any doubt the Information Technology Act 2000 was a welcome change. But the act suffers from certain flaws. The various loopholes that can be pointed out are:

Electronic commerce is based on the domain naming system. Domain naming issues are not even covered by the information technology legislation of 2000. Even domain names are not defined and domain name owners rights and liabilities are not covered by the law. Jurisdiction is also one of the debatable issues in the cases of cyber-crime due to the very universal nature of cyber space. The territorial concept seems to go away with the rising arms of cyber space and the law is very silent on this. The law mentioned herein is the Information Technology Act of 2000.

Though Section 75 provides for extra-territorial operations of this law, but they could be meaningful only when backed with provisions recognizing orders and warrants for information issued by competent authorities outside their jurisdiction and measure for cooperation for exchange of material and evidence of computer crimes between law enforcement agencies.

D. The Prevention of Food Adulteration Act, 1954.

The main objective of food laws is to ensure that the food articles which the public buys should be prepared, packed and stored under sanitary conditions and with such ingredients and such processes so as not to be injurious to the health of people who consume it[33].In India, during the pre- independence period the Indian Penal code 1860 was expected to take care of noxious food. In addition many states had their own legislation to overcome the problem of food adulteration. When different territories in the country were subject to different laws on the same subject, this became a difficult task for implementing Authorities[34]. A new law in the form of the Prevention of Food Adulteration Act 1954 (PFA Act) came into force in order to remove these diversities and loopholes. The guidelines were drawn up in 1955 and are known as Prevention of Food Adulteration Rules 1955 (PFA Rules). The key purposes of the PFA Act and Rules are to protect consumers from adulteration-related ill health; to regulate and monitor the use of food additives and to establish food quality standards[35]. Similar laws apply to both types of food, whether it is processed indigenously or imported.

Food adulteration is probably the most atrocious crime that businessmen commit because it can cause irreplaceable damage to the health or even lives of innocent people. In India the problem is so widespread that 25 percent to 70 percent of most of the foodstuffs consumed in this country are adulterated or contaminated[36]. The same holds true of the country's spurious drug production. According to Pharmaceutical Inquiry Committee, the Government of India, the spurious drugs trade flourishes in India to a colossal extent. This is due to the manufacturer's greed, the negligence of poor customers who go in for illegal dealers for cheap drugs, and the lack of genuine products[37].

---

[33] Anvita Sinha, and N. N. Mehrotra, *Prevention of Food Adulteration: Ineffective Legislation*, 22 Economic and Political Weekly. 75 (1987).
[34] *Id.*
[35] *Id.*
[36] Swasth Hind, Ministry of Health, Govt. of India (March 1963) quoted by Menon, *White-Collar Crime in India (1968).*
[37] Pharmaceutical Enquiry Committee, Ministry of Commerce and Industry, 1954, 146-147, quoted by Menon, *White-Collar Crime in India* (1968).

In 1954, a very important step towards addressing the problem of food adulteration was taken by adopting a central law on the subject, taking into account the limits of the Indian Penal Code, 1860. In *Municipal Corporation of Delhi v. Surja Ram*[38], the object of the Act was explained as follows- The objects and the purposes of the Act are to eliminate the dangers to human life from sale of unwholesome article of food. It is enacted to curb the widespread evil of food adulteration and is legislative measure for social defence. It is intended to suppress a socio-economic mischief, an evil that attempts to poison, for monetary gains, a very source of substance of life and well-being of the community.

But in the Indian scenario the object of the aforesaid act has not been achieved or being effective to a larger extent. The Prevention of Food Adulteration Act, 1954 did not provide for the mandatory standardization of food products. There was no requirement for training to the food inspectors. The minimum numbers of such inspectors required for the area were not given. While sentencing, the judge had no discretion as there was a provision of minimum punishment. On the contrary burden was placed on him to state in judgment the special and adequate reason as to why a particular punishment was tented out[39].

Section 14 A of Prevention of Food Adulteration Act says that "Every vendor of an article of food shall, if so required, disclose to the food inspector the name, address and other particulars of the person from whom he purchased the article of the food. Nevertheless, there is no clause that makes it mandatory for the vendor to show the warranty or any documentation or record of his purchase to the food inspector at the time the sample is seized. This leaves enough scope for manipulation. So it should be mandatory for the vendor to show warranty or proof of purchase at the time of seizure itself[40]. Prosecutions under the Prevention of Food Adulteration Act fail quite frequently because of defective reports of the public analysts, or delay in the examination of samples or because the procedure prescribed by the Act for taking samples is not followed[41].

E. Indian Penal Code, 1860.

In 1939, Edwin H. Sutherland introduced the concept of the White-Collar crime in the field of 'Criminology'. The Indian Penal Code was enacted in 1860. But nowhere in the Code is the term White-Collar crime has been mentioned. However the scope of White-Collar Crimes is so broad that the provisions of Indian Penal Code 1860 relating to certain offenses are closely linked with White-Collar crimes such as corruption, bribery, counterfeiting of coins and government stamps,

[38] Municipal Corporation of Delhi v. Surja Ram, 1965 CriLJ 571 (India).
[39] P.S Rao, *A Critique on the Prevention of Food Adulteration Act*, (1954).
[40] Sinha & Mehrotra, *Super* Note 34.
[41] "Social & Economic Offences", 47th Report, Law Commission, 83.

offences relating to weights and measures, adulteration of food stuffs and drugs, misappropriation of property, criminal breach of trust, cheating and dishonesty inducing delivery of property, forgery, etc. It is an admirable compilation of substantive criminal law and most of its provisions are as suitable today as they were when they were formulated. Yet India's social and economic system has evolved to such an extent that the Code does not fully meet the needs of the present day in many respects. Nation dominates that virtually all major crimes consist of offenses against individuals, properties or state. Nevertheless, the Penal Code does not deal satisfactorily with actions that can be described as White-Collar crimes given the special circumstances under which they are committed and which have now become the dominant feature of some influential parts of modern society. The punishment prescribed for White-Collar crimes under Indian Penal Code, 1860 are proving inadequate. The specific Acts dealing with White-Collar crimes and the provisions of Indian Penal Code are not harmoniously interpreted to control the problem of White-Collar crimes.

JUDICIAL ATTITUDE TOWARDS WHITE-COLLAR CRIMES IN INDIA

Trial courts in India sometimes fail to consider the seriousness of White-Collar criminality and thus tend to be content with awarding white-collar criminals light or even token punishments. The Law Commission has been fully aware of the judicial smugness vis-à-vis White-Collar crimes and the dangers inherent in it[42]. In its 47th Report the Commission observed:

Suggestions are often made that in order that the lower magistracy may realise the seriousness of some of the social and economic offences, some method should be evolved of making the judiciary conscious of the grave damage caused to the country's economy and health by such anti-social crimes…. [W]e hope that the higher courts are fully alive to the harm, and we have no doubt that on appropriate occasions, such as judicial conferences, the subject will receive attention. It is of utmost importance that all State instrumentalities involved in the investigation, prosecution and trial of these offences must be oriented to the philosophy which treats these economic offences as a source of grave challenge to the material wealth of the nation[43].

What the Commission has found with respect to economic offences is particularly detrimental to White-Collar crimes in general. The case of *M.H. Hoskot v. State of Maharashtra*[44] illustrates the attitude of the lower judiciary White-Collar criminals. Hoskot, a reader in Saurashtra University,

[42]SIDDIQUE, *Supra* Note 3.
[43] *Id.*
[44] M.H. Hoskot v. State of Maharashtra, (1978) 3 S.C.C. 544 (India).

found guilty of an attempt to concoct degree certificates of the Karnataka University. The Sessions Court awarded him a single day's imprisonment[45]. The court justified the token punishment on the basis of ground of the offender, his not having criminal tendencies as such and the unlikelihood of his indulging in criminal activities in future. On appeal by the state, the High Court enhanced the period of imprisonment to three years. While upholding the sentence awarded by the High Court, the Supreme Court termed the sentence awarded by the Sessions Court as "incredibly indiscreet". Censuring the Sessions Court for the wrong sentencing, the Supreme Court observed:

It is surprising that the Public Prosecutor has consented, on behalf of the State, to this unsocial softness to an anti-social offender on conviction for grave charges. Does the administration sternly view white-collar offenders, or abet them by agreeing to award of token punishment, making elaborate trials mere tremendous trifles?[46]

Social defence is the criminological foundation of punishment. That Court which ignores the grave injury to society implicit in economic crimes by the upper-berth 'mafia' ill serves social justice. Soft-sentencing justice is gross injustice where many innocents are the potential victims... While iatrogenic prison terms are bad because they dehumanise, it is functional failure and judicial pathology to hold out a benignly self-defeating non-sentence to deviants who endanger the morals and morale, the health and wealth of society[47].

It is, however, submitted that the Hoskot case was, truly speaking, not a case of white-collar criminality according to the meaning given to the term by Sutherland and others. It certainly would be an instance of White-Collar criminality if the certificates were forged or manipulated by an officer, like the registrar of the university in the course of his duties or while exercising powers of administration as such an officer.

Besides prescribing stiffer punishments for White-Collar offenders, the Supreme Court has also held in a number of cases that liberal interpretation must be given to the penal laws dealing with social welfare legislation to see that the legislative object is not defeated[48]. In *Murlidhar Meghraj Loya v. State of Maharashtra*[49], the court observed:

It is trite that the social mission of food laws should inform the interpretative process so that the legal blow may fall on every adulterator. Any narrow and pedantic literal and lexical construction likely to leave loopholes for this dangerous criminal tribe to sneak out of the meshes of the law should be discouraged. For the new criminal jurisprudence must depart from the old canons, which make indulgent presumptions and favoured construction

[45] Imprisonment up to seven years is permissible under Section 468 of Indian Penal Code, 1860.
[46] P.S Rao*, Supra* Note 39.
[47] *Id.*
[48]SIDDIQUE, *Supra* Note 3.
[49] Murlidhar Meghraj Loya v. State of Maharashtra, (1976) 3 S.C.C. 684 (India).

benefiting accused persons and defeating criminal statutes calculated to protect public health and the nation's wealth[50].

Similarly, in *State of Maharashtra v. Mohd. Yakub*[51], the court was of the view that penal provisions calculated to supress smuggling activities may be construed liberally. It may be noted that these rulings in favour of the liberal interpretation of penal provisions relating to socio-economic crimes are at variance with the ordinary rules of construction of penal statues which require strict interpretation and benefit of doubt, if any, must be given to the accused.

Finally, courts in India have given strict interpretation to the socio-economic statutes which do not require any *mens rea* either in the form of intention or knowledge for committing an offence. This is how it should be, though it may be pointed out that the courts have been somewhat reluctant in finding *mens rea* excluded from statutes dealing with more traditional offences[52]. Dealing with a violation of the Foreign Exchange regulation Act, 1947 the majority in *State of Maharashtra v. Mayer Hans George*[53] held that the very object and purpose of the Act and its effectiveness as an instrument for the prevention of smuggling would be entirely frustrated if conditions were to be read into Section 8(I) OR Section (I-A) of the Act qualifying the plain words of the enactment that the accused should be proved to have knowledge that he was contravening the law before he could be held to have contravened the provisions.

ENFORCEMENT OF THE NEW SEPARATE ENACTMENT TO CURB WHITE COLLAR CRIMES IN INDIA

With respect to the enforcement of the new separate enactment relating to White-Collar crimes in India, firstly there is a need to understand the seriousness of various White-Collar crimes that prevailing in the society and their impact on the society. It is the need of the hour that various loopholes of the existing legislation as mentioned above in Chapter Seven of this research paper as to be considered along with other legislations dealing indirectly with White-Collar crimes and look as to how these existing legislations has been efficient in curbing many White -Collar crimes in a much effective way.

Considering these impacts, it is necessary that, as suggested in this research paper, a new separate enactment has to be passed solely relating to White-Collar crimes in India. This enactment shall

[50] *Id.*
[51] State of Maharashtra v. Mohd. Yakub, (1980) 3 S.C.C. 57 (India).
[52] Brend v. Wood, (1946) 62 TLR 462 (DC).
[53] State of Maharashtra v. Mayer Hans George, A.I.R. 1965 S.C. 722 (India).

be tiled as "Prevention of White-Collar crimes in India". The aforesaid new enactment shall contain the chapters including the definition of various White-Collar crimes taking into the already existing definitions mentioned in various legislations, which means the new enactment is in compliance with the existing legislation and also the new definitions of the non-mentioned White-Collar crimes under any Indian Law.

The aforesaid new enactment shall also consist of provision relating to commission of various White-Collar Crimes categorically and also a separate chapter providing punishments for the same. It is suggested that the punishments must be in very serious in nature and should not be given very lightly as it has been seen in the analysis of the existing legislations in chapter No Seven of this research paper, how the lighter punishments has resulted in the easy escape of the white collar criminals. Henceforth it must be stressed in this research paper that punishments should be severe in nature.

Next the said new enactment should consist a separate chapter mentioning about the curbing mechanisms established solely for curbing White-Collar crimes. Here mechanisms refers to the prevention Board that can be established to investigate the White-Collar crimes offences and take necessary actions in respect to same. The said Board should be given exclusive powers and the same has to be mentioned along with functions of the Board. There must also be a mention about the composition of the board and the qualification required. It is very important to add the a provision which shall state that if officials of Board if found in commission of White-Collar crimes either directly or indirectly in any manner, then they are liable for punishment. By adding this provision it increase the transparency in curbing mechanisms and help in successful implementation of the new enactment. Lastly it shall include the required miscellaneous provision for the enactment considering the all the aspects of the White-Collar crimes prevailing in the society.

CONCLUSION

White-Collar crimes are very heinous crime in nature and its impact is costing society more than any other ordinary crime. Even though many legislations are being passed to curb these White-Collar crimes by a means of solely dedicated White-Collar crimes legislations like for example Prevention of Money laundering Act,2002 are not seen much effective in curbing White-Collar crimes as they contain many loopholes. These loopholes has also given wider space for White-Collar criminals to commit such heinous crimes and go unpunished easily because of lack of stringent punishments. Also the Indian Penal Code is silent on the definition of White-Collar

crimes. As observed even judiciary has failed to take into consideration the apt law and punish these offenders.

Thus taking into consideration all these problems of curbing White-Collar crimes in India , it is suggested in this research paper for a separate enactment to curb White-Collar crimes in India. This enactment is the consolidated law containing the definition of all the White-Collar crimes and more stringent punishments should be prescribed for each White-Collar crime. The legislation shall also include strict curbing machineries to address the grievances. Therefore by enacting a consolidated legislation solely relating to White-Collar crimes in India will reduce the crime rate to greater heights.

******