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THE SHADOW ECONOMY: UNVEILING THE WHITE-COLLAR CRIMES IN INDIAN LEGAL SYSTEM WITH A CRITICAL ANALYSIS

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I. ABSTRACT

This research provides a concise overview of white-collar crimes in India, exploring the historical background of the recent scams related to white-collar crime in India and with the significant reports and the case laws. The legal framework in the conduct of white-collar crimes lacks a rigid structure. When the world encountered business and technological development the presence of white-collar crimes rapidly increased, and to restrain it a strong structure of law was imposed.

This paper examines the causing factors of white-collar crime in our society which includes the influences, of economic, financial, and political. And also explores the various types of white-collar crime in our society. The conclusion of various reports in the analysis of white-collar crime in the cases made a significant change in some aspects of the law. The stringent law to curb the conduct of crime in the economy has a heinous adverse effect on the nation's economy.

And discusses the practice of misconduct of financial crimes by the higher classes and the professional scams that take place. This research paper concludes with an analysis of the white-collar scams in India by providing an overview of the conduct of white-collar crime with a significant case analysis. In summary, this research paper provides a valuable resource for researchers and legal practitioners seeking to understand white-collar crimes and the conduct of white-collar crimes related to the structural legal system of India.

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II. KEYWORDS

White collar crime, Indian Penal Code, Embezzlement, Scams, Tax evasion, Inside trading and SEBI

III. INTRODUCTION

The concept of manipulating others and individuals to gain economic benefits tends to be an illegal act of practice in society. Even though the world has encountered several acts of bribery, corruption, and fraud still the victims are the common people. In the modern era, the act of corruption was digitized and several measures were encountered by the government to neutralize it.

India was diverse in the field of business and landscape economics. In the act of corruption and financial crimes, the concept of white-collar crime emerged. And this concept of crime is not new to India. Even in the British-India period, white-collar crimes were practiced by individuals who were in the position of high economic class.

To neutralize the Indian government placed several measures and made a legal framework to penalize the conduct of white-collar crimes and also to protect the individuals in the society. This regulatory framework enforces the mechanisms to punish the misconduct of financial fraud and corruption and protects the people from the abuse of power by individuals who are involved in white-collar crimes. In an unpredictable society, the presence of white-collar crime can hurt the economic balance and cause hazards to the country's economic state.

The enforcement of the strict legal framework for the neutralization of white-collar crimes creates a transparency of work in the both government and private sectors in society.

IV. RESEARCH OBJECTIVES

- To know the legal aspects and the seriousness of white-collar crimes in India.
- To know the loopholes in the structure of the legal system involved in white-collar crimes and to make a strong structure of law.

V. RESEARCH QUESTIONS

- Why the white-collar crimes often unnoticed by society?
- Why does the Indian legal system not have specific laws for white-collar crime?

VI. RESEARCH HYPOTHESES

- The white-collar crimes in our society show significant growth through the use of technology. By acquiring the knowledge of legal aspects of white-collar crime we can avoid such conduct of crime of participation.
- Even though the legal system does not have a specific law it has an indirect effect on white-collar crime in our society. The law related to the act of fraud in society has an indirect effect on the conduct of white-collar crimes.

VII. RESEARCH METHODOLOGY

This paper utilizes a strictly doctrinal research approach. Doctrinal research, known as library-based research, primarily involves the study and analysis of legal statutes, case law, and academic writings. This method is ideal for exploring the theoretical and conceptual dimensions of law.

It systematically presents legal doctrines and principles. In doctrinal research, primary sources include statutory materials, judicial decisions, and authoritative literature. Secondary sources like commentaries, articles, and legal summaries are also essential. The research process entails identifying, gathering, and critically evaluating these sources.

The goal is to form logical conclusions and provide insights into the legal questions being studied. This paper aims to deliver a thorough and unified view of the legal structure relevant to the topic addressed.

VIII. LITERATURE REVIEW

The paper draws on the legal provisions of the Indian Penal Code, 1860 of financial fraudulent acts and the several legal acts to rewind the act of white-collar crimes in

India. This paper analyzes economic scams and the landmark cases involved in white-collar crimes which include *Abhay Singh Chautala v. C.B.I.*, *SEBI v. Burman Plantation, and others* and the *SIRECL Case*. These cases have their tier and the judgment binding itself.

This paper discusses the reports regarding the white-collar crimes in India and the impact of the white-collar crimes which changes the economic status of the nation and also discusses the challenges and the loopholes of the legal system in the country.

The literature reviewed in the paper provides a comprehensive legal framework for the conduct of white-collar crimes in society. And also provides the pros and cons in the legal system of India and later scams of money laundering in India.

IX. WHITE-COLLAR CRIME

The term *white collar crime* was introduced in the 20th century by the sociologist Edwin Hardin Sutherland in the year of 1939. He defines the term white collar crime as “*the crimes committed by the people who enjoy the high social status, great repute, and respectability in their occupation*”.

His concept of definition is that a person enjoys a high social status in society and commits a crime in the course of his/her occupation by causing a violation of contract or trust.

A. Historical Background

The origin of the white-collar crime was in the Carrier’s case which occurred in the year 1473 in England. In that case, the agent was entrusted with the transportation of wool from one place to another. They found that the agent was guilty of stealing wool. The England court adopted the concept of the Doctrine of ‘*breaking the bulk*’ from the Carrier’s case.

In the period of the Industrialization era, many crimes related to capitalism were raised. In 1890 in the USA, the Sherman Antitrust Act was enforced to make the practices of monopoly in the industrial sector a crime.

B. Causes of White-Collar crime

The practice of white-collar crimes in India was engaged by the unethical manner of the professionals in the society, this mode of crime was started by the different necessities for the high sociolect economic people. Many professions were involved in the practice of white-collar crime which was often unnoticed by society. The causes of white-collar crime were often led by competition and the greedy nature of human behavior.

- **Greed:** We know that naturally, humans are the animals that have the intelligence and are placed in the top spot of the animal kingdom. Even though the human nature of greed was not compromised. Likewise, the people of the high classes tended to practice white-collar crime which was often unnoticed to gain an economic position. They try to achieve the economic position even if they fit as economically independent. Their act of greedy nature often commits the crime in the society.
- **Competition:** Society was filled with competitors even in the economic sectors and value, people often tend to achieve the economic place that popularly knows the concept of “survival of the fittest”. This made the rise of competition nature in human beings even that cause in an unethical manner. This competition inflicted the way of a rise in an illegal manner to the human kinds which is also responsible for the cause of white-collar crime in the society.
- **Lack of standard laws:** In the modern era, white-collar crimes are often committed by technology which causes complications in the input of the law and this practice was done in the privacy of the individuals which makes it difficult to influence the crime. The lack of standard law acted as a loophole in the legal system of the nation. Even the political superiors and high classes influence the power in society which is the cause of white-collar crime

C. Types of white-collar crimes

- **Fraud:** The act of fraud in white-collar crime is one of the straightforward acts of crime that involves the deceiving of the victim and making over or inflicting a fake trust on the individual to scam or to act fraudulent to gain money from the victim in a wrongful manner.
- **Ponzi scheme:** This type of crime was conducted to make an individual invest which promises great returns. They pretend that the investment made by the victim will provide a good return in the future, but in reality, the scammers deceive the victim into investing and make a significant loss in the investment to the victim.
- **Embezzlement:** The act of a person entrusting to another by providing money or property for its use which is a benefit to the person while the other person uses illegally is known as the act of embezzlement. Simply the act of embezzlement is an act of breach of trust to the entrusted person.
- **Inside trading:** The practice of inside trading was often done in the stock market sector which gave an advantage to the investors by gaining illegal information this caused the monopoly in the stock markets by the individual investor. By the inside trading trade, the information which causes financial advantage to the particular markets.
- **Tax evasion:** When there is a presence of huge amount transferred from one account to another it imposes a tax on the transfer of huge funds. Tax evasion is made by levying less amount of tax by the authority which was done by the corporation. Simply tax evasion is meant to reduce the individual's burden of tax and make an escape route from the tax that was imposed by the government.
- **Money laundering:** Money laundering is simply known as converting illegitimate money to a legitimate form of money that gains his economy illegally. The individual investors invest their black money to convert to

lawful money they often practice money laundering to convert it as the wealth of their own.

- **Extortion:** Extortion is to make an individual make the payment of money by using threats or coercion. This manipulates the victim to make the payment of money or the favor for the gain of the particular person who is involved in the act of extortion. This illegal practice was often done by the authority who has the power over others and used coerce to the victim for the transfer of monetary benefits to the authority.

X. LEGAL PROVISIONS RELATED TO WHITE-COLLAR CRIMES IN INDIA

The Indian government had put forth various implementations and made a legal framework regulating the protection of people from the fraudulent act of shadow economics which was done by the higher classes. Even though the legal system does not have a specific legal act for white-collar crimes eventually various laws in India indirectly penalize the act of white-collar crime.

Laws included for the white-collar crimes in India are,

- *Indian Penal Code, 1860 (IPC),*
- *The Companies Act, 2013,*
- *The Benami Transaction (Prohibition) Act, 1988,*
- *The Securities and Exchange Board of India (SEBI) Act, 1992,*
- *Income Tax Act, 1961,*
- *Emblems and Names Prevention of Improper Use) Act, 1950,*
- *Foreign Exchange Management Act, 1999,*
- *Prevention of Money Laundering Act, 2002 and*
- *Information Technology Act, 2000*

Some of the legal provisions were included for the protection of the common people from the act of white-collar crimes,

A. Indian Penal Code, 1860

- **Section 503 Criminal Intimidation-** *“Whoever threatens another with any injury to his person, reputation or property, or the person or reputation of anyone in whom that the person is interested, or to cause that person to do any act which he is not legally bound to do.”*
- **Section 405 Criminal Breach of Trust-** *“Whoever, being in any manner entrusted with property, or with any dominion over property, dishonestly misappropriates or converts uses or disposes of the property in violation of any direction of that law prescribed.”*

B. The Companies Act, 2013

- **Section 447 Fraud-** *“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.”*

C. The Prevention of Corruption Act, 1988

- **Section 7 Punishment for acceptance of any benefits other than lawful-** *“A public servant shall accept any gratification other than lawful remuneration for an official act.” Where the imprisonment shall not be less than three years.*

XI. WHITE COLLAR CRIMES IN INDIA

- **2G Spectrum Scam:** This 2G Spectrum Scam is also popularly known as the “Commonwealth Scam” which involved the allocation of a 2G license that dates back to 2008. The allegation was made for the cancellation of 122 2G licenses which was made on a first-come-first-serve basis (FCFS) to specified private telecommute operators².
- **Satyam Scandal:** The Satyam Computer Service scam was popularly known as the “Biggest Corporate Fund in India”, which involved the manipulation of accounting fraud in India. This scam exposed the loopholes in the Indian government system that allow fraudulent activities and inside trading. In

² AIR 2012 SC 3336, AIR 2012 SCW 4784

2009 nearly 14,000 crores of fraud-ed money were exacerbated. The company's founder Ramalinga Raju admitted the inflating of the company's revenue and made a false balance sheet. In 2014 SEBI amended the list Agreement for the establishment of a vigil mechanism. This landmark case made the Indian government a strict legal framework for corporate governance.

- **PNB Fraud:** Punjab National Bank (PNB) disclosed nearly 12,000 crores for an individual, diamantaire Nirav Modi. The PNB employee made a fake letter of undertaking (LOU) without collateral to Nirav Modi. Nearly 200% of the wealth of source income of Nirav Modi was amassed by the Punjab National Bank.
- **Narada Sting Operation Case:** This case involved a series of sting operations where it was carried out by the Narada news, which targeted and exposed the politicians of All India Trinamool Congress (AITC). It showed the bribes that were exchanged for unofficial favors.
- **Kingfisher Airline Scam:** This scam involved the defaulting of a loan amount of over Rs.9000 crore by Kingfisher Airlines. The Supreme Court ordered that to make an attachment of assets over Rs.1400 crore of the promoter of the Kingfisher Airline Vijay Mallya.
- **Ketan Parekh Scam:** This scam was placed by stock manipulation in multiple companies from 1991 to 2001. The Kent Parekh Scam exposed the loopholes in the exited stock markets, which resulted in steep hikes in share prices³. The scam involved the purchase of the large stakes of small market capitalization and jacked their prices. Which resulted in the ban on Badla. This trading introduced the stockbroker's controls of the stock exchange were demolished.
- **Scam 1992:** This scam is well known as the Harshad Mehta Scam which involved the scam of Mumbai stock market trading by manipulating the

³ Chakraboti, 2016

stock prices and increasing the price. He then increased the stock prices which raised controversies in the market and made a profit wholesomely by the fraudulent act. Harshad Mehta had made the scam nearly over 5000 crores by the deception. In the act of the Scam in 1992, the government made strict regulations in the stock market which avoided the controversies in the stock prices.

A. Reports on White Collar crimes in India

Due to the threat of White-Collar crimes in India, various committees were organized for the regulation of the spot deduction of white-collar crimes in society. These committees were organized to eliminate the conduct of white-collar crimes and to secure the people from the abuse of power by the high classes.

- **Report on commission for the injury on Administration of Dalmia Jain Companies, 1963:** This report was conducting the Sahu Jain family to the Dalmia Jain group. The allegation against the company's group for the conduct of corruption by the Vivian Bose Commission into affairs of the Dalmia Jain group of companies in 1963.
- The report made that the collection of black money was circulated and found the undisclosed assets and tax evasion. In 1962 the case finally sentenced Ramkrishna Damia on the tax evasion and criminal misappropriation of funds.
- **Das Commission Report:** The report was made in the case of R.P. Kapoor v. Singh Kairon⁴ In which the Chief Minister of Punjab was accused of the usage of wealth boasts of public expense as his family expenditure. In which the court ruled that the father could not be liable for his son's action and we could not stop the carrying of his business. The court held that the son cannot use the father's position to exploit others and dismissed the petition.

⁴ 1964 AIR 295 SCR (4) 224

- **Law Commission 47th Report:** This report was made penalization of a corporate body, which the act of guilt should be punished for the wrongful acts. The commission recommended the inclusion in the *Indian Penal Code, of 1860* In the case of the offense committed by the corporation the imposition of the punishment, fine or both should be imposed on the offender by the power of the court. In case of the offense committed by the corporation which is liable for either imprisonment or fine or even both by the power of court the offender should be liable for fine only. Finally, the corporation is meant for the incorporation of a company.
- **Santhanam Committee:** This report by the Santhanam Committee improved the imposition of punishment in the act of White-collar crime in the nation. This report was done by the consideration of the 29th Law Commission Report on the Prevention of Corruption. This report concluded that the growth of white-collar crimes in society is caused due to the technology advancement. The scientific use of the conduct of white-collar crimes causes the demolition of public morals.

B. Case law on White collar crimes

Several cases include the conduct of white-collar crimes in India. This research paper provides a critical analysis of some landmark cases that involved white-collar crimes and scams in India.

- **Abhay Singh Chautala v. CBI:** In this case, the allegation was raised by two appellants for whom the charge sheet was filed under section 13(1)(e) and section 13(2) of the Prevention of Corruption Act, 1988 read with section 109 of IPC, 1860. The allegation made that the disproportion of the income in the time when they were as the members of the Legislative Assembly.⁵ The High Court ordered that the conduct of the disproportion of the income and the disclosure of the properties was found guilty. So, the sanction made under section 19 of the Prevention of Corruption Act, 1988 is valid.

⁵ Criminal Appeal No. 1257 of 2011

- **SEBI v. Burman Plantation and Others:** In this case, the Allahabad High Court alleged that the SEBI had made a wrong allegation of the company for the payment of its debts which includes the payment of the investors. The court noticed the council which states that the advertisement by the company was given in 2003 and the order was passed in the year 2004 in which the company is not liable for the debts. Finally, the court held that the sum of money claimed was cited by the investors and imposed imprisonment for 10 years and increased the fine to 25 crores by amending section 24(1) of the SEBI Act. By which the court imposed the liability for the payment of debts.⁶
- **Sahara Indian Real Estate Corporation Ltd. (SIRECL) and Sahara Housing Investment Corporation Ltd. (SHICL) vs. SEBI:** In this case, nearly a debenture of Rs. 24,400 crores in the year 2008-09 which was the organization of both SIRECL and SHICL. They made the deal over as companions and partners with the Sahara India Group of Companies in which the financial backers were not discernible and almost ended up Rs. 2.21 crore. In 2012 the Court held that the two organizations namely SIRECL and SHICL should provide the sum of amount Rs. 24,400 Crore and an additional 15% interest to its 2.21 Crore.⁷

XII. CONCLUSION

Even though the crime is committed by the high classes the victims are the common people of the nation. White-collar crimes should be noticed in everything to it. This act of crime makes the *rich richer to the richest and the poor to the poorest*. White-collar crime should be considered as the serious nature of the offense. There are still gaps between white-collar crime and the legal framework that is to be filled to make a strong structure of law against white-collar crime.

⁶ SEBI v. Burman Plantation and Others 2013, CC No. 69 of 2010.

⁷ Soham Shah, M a Lokhandwala, **D M Chudasma** "*Decoding Farm Laws*", International Journal of Scientific Research and Engineering Development, Vol.4, Issue.2, pp.590-595, 2021, ISSN: 2349-7238

This should be changed in our future generation every person should be liable for their action and no other common people should suffer.

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