

WHITE COLLAR CRIME

A study of emerging trends in India

DISSERTATION

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(Kartikey Dixit)

LL.M (Criminal and Security Law)

KEY OF ABBREVIATION/ ACRONYMS

A.P.	-	Andhra Pradesh
AAR	-	Authority for Advance Rulings
ACB	-	Anti-Corruption Bureau
AIA	-	Administration Improvement Act
AIDS	-	Acquired Immune Deficiency Syndrome
AIIMS	-	All India Institute of Medical Sciences
AIR	-	All India Reporter
ARC	-	Administrative Reform Commission
BBCA	-	Bhrashtachar Bharat Choddo Andolan
BCC	-	Blue Collar Crimes
BCI	-	Bar Council of India
BIS	-	Bureau of Indian Standards
BPRD	-	Bureau Of Police Research And Development
CBI	-	Central Bureau Of Investigation
CCFS	-	Central Committee of Food Standards
CJI	-	Chief Justice of India
COFEPOSA	-	Conservation of Foreign Exchange and Prevention of Smuggling Activities Act
COS	-	Committee of Securities
CPA	-	Consumer Protection Act
CQIM	-	Corruption Quit India Movement
Cr.P.C.	-	Criminal Procedure Code
Cri.L.J.	-	Criminal Law Journal
CvC	-	Central Vigilance Commission
CVO	-	Chief Vigilance Officer
DDP	-	Defence Procurement Policy
DGHS	-	Directorate General of Health Services
DGS&D	-	Directorate General of Supplies & Disposals
DRT	-	Debt Recovery Tribunal

DSPE	-	Delhi Special Police Establishment
DTAC	-	Double Taxation Avoidance Convention
DTC	-	Direct Tax Code
E	-	Electronic
E.H.		Edwin Hardin
EC	-	Essential Commodities
ED	-	Directorate of Enforcement
EOW		Economic Offences Wing
EU	-	European Union
FBI	-	Federal Bureau Of Investigation
FCPA	-	Foreign Corrupt Practices Act
FCRA	-	Foreign Contribution Regulation Act
FDA	-	Food Development Authority
FICCI	-	Federation of Indian Chambers of Commerce and Industry
FIR	-	First Information Report
FIU	-	Financial Intelligence Unit
FPO	-	Food Product Order
FRA	-	Food Regulation Authority
FSSA	-	Food Safety and Standards Act
GAAR	-	General Anti Avoidance Rules
GM	-	Genetically Modified
HACCP	-	Hazard Analysis and Critical Control Point
HEW	-	Health, Education And Welfare
HTIL	-	Hutchison Telecommunications International Limited
IAS	-	Indian Allied Services
IB	-	Intelligence Bureau
ICC	-	Interstate Commerce Commission
IEM	-	Independent External Monitor
IES	-	Indian Education Sector
ILI	-	Indian Law Institute
Irztr		Indian Monetary Fund
IP	-	Integrity Pact
IPC	-	Indian Penal Code

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INTRODUCTION

The present decades are experiencing a major socioeconomic phenomenon called globalization. These phenomena were driven by vast increase in trade, more mobility, fast means of communications and technological innovations. Trafficking in narcotics, trafficking in arms and explosives, fraudulent financial deals, foreign exchange manipulations, etc., falling under the head 'Organized Crimes' and/or 'White Collar Crimes' (in our context) are adding new dimensions to the emerging crime scenario. Economic Offences' are the manifestations of the criminal acts done either solely or in an organized manner with or without associates or gangs with intent to earn wealth through illegal means, and earn out of illicit activities violating the laws of land, other regulatory, statutory provisions governing the economic activities of the government and its administration. These offences are not different from the traditional penal offences as far as their criminality is concerned.

The categorization of these offences as a separate class is mainly due to the facts that they differ in *modus operandi*, and such activities are continued without legality by taking advantage of the deficiencies of the laws, rules, and regulations. Such operations are also conducted with precision by circumventing the prescribed rule of law with Impunity until after passage of time, the consequences of such offences surface leading to *post facto* legal intervention by the enforcement authorities. The activities of the above nature indulged in by organized crime groups by adopting various strategies need to be specially dealt with by an appropriate counter strategy. To tackle such forms of crimes one of the important legal development within the country as well as other developed countries in the world is to bring under the ambit of law powers to confiscate assets acquired by illicit means. Traditional laws to some extent deal with confiscation of assets acquired by criminal acts and these have to be supplemented by some special measures as well. Institutional supports have been developed over the years to concentrate the enforcement drives by setting up special units exclusively to deal with such forms of economic crimes.

The economic offences, the experts opine, cause irreparable damage to the economy of the country, and its impact is felt in the economy down to a common man on the street affecting the growth and development of the country. Some of the major impacts that may be caused by the economic offences illustratively are:

- Increase in inflationary pressure,
- Distortion of developmental work,
- Uneven distribution of resources and creation of elitism,

- marginalization of tax base,
- generation of enormous amount of black money,
- creation of a parallel economy,
- development works/efforts are undermined,
- the country's economic equilibrium is at stake,
- the breeding ground of corruption in various forms at various levels,
- illicit business and public office corruption thrive and affect normal business activities,
- resources of financial institutions and commercial institutions are diverted and distorted, abused for personal gains;
- weakens morale and commitment of the citizens, and
- the poor/weakest continue to be poorer and are at risk.

There being a range of economic offences, some are cognizable and some non- cognizable in nature. Hence, the police alone is not directly empowered nor are they equipped adequately considering the range of specific laws to investigate and successfully arrest the offenders except in cognizable offences. None the less, regular police deal with a considerable number of economic offences falling under the broad category of 'cheating', 'counterfeiting and criminal breach of trust.'

The present day range of economic offences are far too many in range as well as levels of sophistication of their commission. Considering the importance to deal with such kind of offences which undermine the economy of the country, the Government of India have established a number of enforcement agencies having the requisite skills to investigate such crimes with successful results. These enforcement agencies are specially authorized under relevant provisions of various acts and statutes.'

Although the basic principles of enquiries, investigations and collection of information are well known to police officers, there is need to reorient their approach while dealing with economic offences. Doubtless, the Finance Ministry has various specialized agencies to deal with Foreign Exchange violations, of fiscal laws. While these agencies are concerned with the enforcement aspects, they would be handicapped in dealing with many-sided ramifications of economic offences. Each of these agencies would be able to tackle only the direct aspects of the matter but they will not be able to handle the subtler and complicated details of such organized crime, especially those called White Collar Crimes. Hence, an important Wing of the CBI has been set up to deal with such cases.²

Exchange control in India is not the only official restriction affecting the country's external transactions. It supplements other regulations particularly those applied under the Imports and Exports (Control) Act. The two controls are closely allied with each other. What I wish to emphasize is that an economic offence, say smuggling, cannot be viewed as an isolated fiscal offence. The smuggler by the very process of financing the racket is committing violations of exchange control, as such; the transactions are made across international frontiers.

The money used in such financing is definitely not a declared income in the income tax returns. It follows that false entries in tax returns have been made. If at all those returns have been filed. As a result, the provisions of the income Tax Act and probably some sections of the Indian Penal Code for making false declarations will be attracted. For instance if gold is to be bought outside the country, one has to pay either in the currency of that country or in the form goods that are in demand there. It is well known that silver is smuggled out of India for payment against purchase of luxury goods that are brought into the country through devious means. It is also known that in order to hoodwink the Customer's authorities, the Indo-Nepal Treaty of Trade and Transit is abused and third country goods are brought in India via Nepal. Likewise under forged export license, goods of our country are smuggled through Nepal into third countries.

One other method adopted for acquiring foreign exchange is to purchase dollars or pounds from tourists by paying a higher value than the exchange rate. Some of this illegal money is used in the purchase of narcotic substances for being smuggled out to foreign countries where the street value is enormous. Here we see the interconnection between exchange violations and smuggling of narcotics in which a number of interstate and international gangs are involved. Interpol, two-third of whose work concerns drugs, has repeatedly brought the problem of narcotic to the forefront in international forums and laid great emphasis on the need to take effective action to stamp out this type of illegal traffic. India is a signatory to international agreements on Narcotics Control and is, therefore, obliged to act effectively in this area.

Another deleterious economic offence is the forgery and dissemination of currency notes both of our country and of hard currency areas. There are frequent rumors and speculation regarding the foreign origin of some of the forged rupee notes. In fact, there have been questions in Parliament to the effect that lakhs of counterfeit currency which are suspected to be from a neighboring country are found distributed in some parts of India. The ramifications of the counterfeit currency cases transcend interstate and international borders. As the facilities available with the State Police Force to undertake such complicated investigations are limited, the responsibility has to be borne by the CBI which a central agency is having good report with the NCB's of foreign countries.

¹See R.C. Mishra, "**Crime Trends and Criminal Justice**" 1st Edition, 2001, Pg.No. 219

² See F.V. Arul, "**Some thoughts on economic offences**" CBI Bulletin, **Vol.9**, June 2001

Malpractices indulged in by Public Limited Companies are another aspect of economic offences as implied White Collar Crimes which adversely affect public interest. Though many of the offences under the Companies Act arise out of defaults or illegal omissions, there are a number of offenses involving frauds, misappropriation etc³

In view of the circumstances, Socio-economic has emerged as a separate field of study in the late twentieth century. If we probe into the enigma of socio economic offences the root cause lies in the lust for money. These crimes are always committed by educated, highly qualified and socially reputed people. The prominent hall marks in socio-economic crimes are that these offenders pretend this illegitimately earned money as a legitimate money. In the lap of globalization and advancement a new paradox has come in sight. It is conglomerate challenge before our law. On one hand we have set our foot in the world of competition, Information technology, Cyberspace and e-world (electronic world), however, on the other hand the rate of socio-economic crimes have been increasing and degrading the quality of life day by day and, therefore, increasing gap between classes of people. While law could never have been divorced from other disciplines, the technology-law interface has surely freed jurisprudence from the clutches of solitude. Technological advancement has necessitated that legal system adopting to change and embrace technical phenomenon, so that order, harmony and peace are preserved in the e-world. It has been observed that the banking industry has become a haven for the growth of this new stream of e-crime. A new dimension of offences has taken birth in the lap of cyber-world, Electronic crime (e-crime), or Computer crime.⁴

Not only in India but in other countries too white-collar crimes have been brought into a sharper focus of public attention. The loss from business frauds affects the entire economy of the country as against the unlimited damages caused by offences against life and property. A whole community of taxpayers is cheated out of the benefits, that a welfare society is expected to provide, by antisocial elements who corner pecuniary benefits without much effort and without the fear of law. There is a strong feeling wide spread that white-collar crimes be included in the general criminal law of the country, that punishment for such offences be enhanced with mandatory sentences; and that the definition of "stolen property" be extended so as to include assets obtained through fraud and cheating with provision in the law for confiscating such illegal proceeds on the conviction of the offender.

Admittedly, Economic crimes which in their ambit also include white-collar crimes because of the diverse nature of their component activities, they are incapable of simple definition. However, certainly and directly they undermine the stability of society albeit in a subtle fashion and can lead to considerable political and social discord.

³ *ibid*

⁴ Information available at <http://www.jurisonline.in/>

⁵ F.V. Arul, "Some thoughts on economic offences" CBI Bulletin, Vol.9, June 2001

Thus, crimes committed by the convicts employed in white collar jobs are termed as White Collar Crimes. White Collar Crime is an illegal act or series of illegal acts or doing of legal act for achieving an illegal objective committed by any person by non- physical and/or non-violent means and by guile, to gain money or property wrongfully or to avoid payment of legal dues to retain money. White Collar Crimes which are mostly economic offences are broadly categorized in certain classes like banking and allied fields, tax and duty evasion and smuggling, foreign exchange and export-import violation, violation of industrial labour and environmental regulations, hoarding and black marketing, adulteration of foods and drugs, Hawala and other benami transactions, bribery and other corrupt practices, coordinated drug trafficking and money laundering etc. Recent crimes, i.e. related to internet, website etc.

In most of developing countries, where corruption in public life is at zenith the degree of white collar crime has also reached the menacing dimensions. Government officials from bottom to top, are frequently reported to be engaged in many such crimes. Bank scams, Hawala fraud and computer generated crimes, crime in electronic banking, corporate frauds, and counterfeiting coins and currency, doctors and drug companies cheats, corruption in business, black money, misappropriation of govt. funds, match fixing etc. are among the cases most frequently reported in media in India. ⁶

A number of special laws have been enacted in our country to regulate customs, excise, foreign exchange, narcotics drugs, banking, insurance, trade and commerce relating to export and import, etc. The respective laws directly empower enforcement of the laws by their respective departmental enforcement agencies created under statutory provisions. These laws provide necessary legal powers of investigation, adjudication, imposing of fines, penalties and under special circumstances arrest and detention of the persons for the offences committed by them. These officers of the enforcement agencies are also vested with powers similar to those of police to summon witnesses, search and seize goods, documents and confiscate the proceeds. Undoubtedly, the economic offences which carry the principal motive of acquiring wealth through illicit means require special strategies to counter.

⁶ See, Giriraj Shah, “**White Collar Crimes**”, First Edition, 2002, Vol.1,Chapter-1

The universally emerging legal recourse to combat economic crimes which is popularly getting characterized as ‘money laundering’ and ‘dealing in proceeds of crime’ is by enacting legislations bringing under its ambit powers to attach and confiscate proceeds so as to deny the monetary advantage illicitly achieved. Some of the existing legislations of the country provide scope for confiscation of the proceeds of crime and forfeiture of assets. These include the following:⁷

- I. Criminal Law (Amendment) Ordinance, 1944
- II. Customs Act, 1962(Sec.119 to 122)
- III. Law of Criminal Procedure Code 1973(Sec.452)
- IV. Foreign Exchange Regulation Act, 1973 (Sec.63)
- V. Smugglers and Foreign Exchange Manipulators(Forfeiture of Property) Act, 1976)
- VI. Narcotic Drugs and Psychotropic Substances Act, 1985(Sec. A to Sec. 68 Y)
- VII. Terrorist and Disruptive Activities (Prevention) Act, 1987 (Sec.8 to Sec.21 relating to presumption)

New legislations may be called for to plug the existing loopholes and to bring into force a comprehensive legislation to make confiscation of properties and forfeiture of assets more effective, in the light of new legislations adopted in different countries.

There has been no dearth of attempts to define the term “Economic Offences”. Several Commissions, theorists and administrators have, from time to time, drawn attention to the serious menace which Economic Offences pose to the moral and legal fabrics of society, and also suggested ways and means to counter this menace. Viz.

- Law Commission 29th and 47th reports,
- Santhanam Committee on Corruption, and
- UP Police Commission Report 1971, had gone into the matter in enough details.
- Economic Offences Wing in UP CID was established in 1970 as a modest step in this direction.

⁷See, R.C. Mishra, “**Crime Trends and Criminal Justice**” 1st Edition, 2001, Pg.No. 219 See, Giriraj Shah, “**White Collar Crimes**”, First Edition, 2002, Vol.1, Chapter-1.

HISTORICAL BACKGROUND:

The American sociologist Edwin Sutherland first coined the phrase “White — Collar Criminality”, which he described as a ‘crime committed by a person of respectability & high social status, in the course of his occupation.

In 1872 the Albert Morris refers to a paper entitled ‘Criminal capitalists’ which was read by Edwin C. Hill before the International congress on the prevention & Repression of crime at London.

In 1934, Again Morris drew attention to the necessity of a change in emphasis regarding crime. He arrested that anti-Social activities of persons of high status committed in course of their profession must be brought with the category of crime and should be made punishable.

Finally, E.H. Sutherland through his pioneering Work emphasised that these Upper Worked‘ crimes which are committed by the persons of upper Socio-economic groups in course of their occupation — violating the trust , Should be termed as “ White Collar Crime “ So as to be distinguished from traditional crime which he called “Blue Collar Crime“

And the concept of\White Collar Crimes found its place in criminology for the first time in 1941.

OBJECTIVES OF THE STUDY:

- To analyse the concept of White Collar Crimes prevailing in today’s scenario.
- To find various practical problems regarding the enforcement and adjudication of the White Collar Crimes.
- A positive analysis of various legislations relating to White Collar Crimes meant for curbing the white collar crime.

PROBLEM OF WHITE COLLAR CRIMES IN INDIA

It is not easy to assess the true extent of white-collar criminality in a community. Some of the reasons like complexity and impersonality of the offences and frequent lack of prosecutions and punishments for white-collar crimes often pose problems. Moreover, the usual sources of crime statistics do not give such information of the extent of white-collar crimes since they confine their interest to the cases tried in ordinary criminal courts and many white-collar crimes are dealt with by tribunals, administrative boards and commissions of inquiry.

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.

An early attempt in this direction appears to be the Vivian Bose Commission (1963), appointed to probe into the working of companies in the Dalmia-Jain group, found that there was a loss of an estimated 3.5 crores of rupees as a result of fraud and improper use of funds of the concerned companies by the management.

The Santhanam Committee appointed to report on the corruption in the country found that during the five-year period from 1958 to 1962, licences valued at seventy million rupees were obtained or wrongfully utilized by nearly 700 firms through misrepresentation, forgery or other breaches of the export/import control regulations.

The present-day white collar criminals are more suave and less forthright but not less criminal. Criminality has been demonstrated again and again in investigations of land offices, railways, insurance, munitions, banking, public utilities, stock exchanges, the petroleum industry, the real estate industry, receiverships, bankruptcies, and politics.¹⁵

Therefore, the burning problem remains as to how to tackle with such fast growing white-collar crimes in various fields although at every walk of life on every day at every hour we feel frustrated of not getting such offenders to book. Such frustrations, as humane in the present day artificial mock society, are leading to attract more people to white collar crimes. What a tragedy?²⁷

¹⁰ Information available at <http://www.jurisonline.in/>

¹⁴ See, Ahmad Siddique, "Criminology" 2001, Eastern Book Co., Lucknow. Chapter-XII, Pg. No. 389-3916

¹¹ See, Justice Pasun Kumar Deb, "White-Collar Crime- Crime Committed by A person of Respectability and High Social Status in Course of His Occupation", Criminal Law Journal, Vol. 2, 2000, April- June, Pg. No.63

¹⁹ See, Vijay Pratap Singh, "Fake Drugs a White Collar Crimes" Calcutta High Court Notes, vol. 1, 2008, p.9

²⁰ See, Justice Pasun Kumar Deb, "White-Collar Crime- Crime Committed by A person of Respectability and High Social Status in Course of His Occupation", Criminal Law Journal, Vol. 2, 2000, April- June, Pg. No.63

HYPOTHESIS OF THE STUDY:

Our study of White Collar Crimes, having American overtones, envisages the existing scenario of rampant Soeio-economic offences and wide spread corruption in Indian context. The emerging trends of such crimes are elusive indeed in as much as the law and its enforcing agencies over all tends to be failing to prove the governance and its legitimacy to the satisfaction of common people who suffer at large.

It appears to be an admitted fact of common knowledge that certain business, occupations and professions [having links (direct/indirect) with some power or status] provide opportunities for violation of rule of law in India since long. Such violations leading to number of soeio-economic offences/ crimes which often attract no public attention (they deserve) in our country due to widespread poverty, illiteracy and rampant corruption in almost all organs/ agencies of governance due to systematic failure thereof.

Admittedly, besides the traditional crimes like assault, battery, robbery, dacoity, murder, rape, kidnapping and other acts and omissions involving violence, there are increasing number of anti-social and anti- human activities which the persons of upper strata, in a sick society like ours, carry on in course of their business, occupation or profession.

Thus, any report or complaint against such business or occupation/professional tacties often goes unheeded and unpunished to the advantage of culprits-the violators of law leading to corruption in the form of white collar crimes all around. But the people know very little about the trickery of these business mafia criminals and even when they know, they are apathetic towards the problem and as enormity because of the bitter fact that the legal battles involving such crimes are dragged on for years in the courts and tribunals.

As a result the charges against the offenders/ criminals are forgotten long before they are actually settled. While, in fact, India has no dearth of laws but the challenging problem is there due to lack of enforcement. That is why and how I undertake this subject matter for my study/ research, so as to comprehend the multifaceted problems and related possible solutions and correctives which need immediate attention at different levels of our administrative and judicial system towards sustaining rule of law.

METHODOLOGY ADOPTED FOR THIS WORK:-

It is a doctrinal and analytical research based on the study of Books, Reports, Journals, Magazines, Legislative and Judicial pronouncements, declarations, conventions, treaties and information available on internet etc. for this I visited libraries of various institutions, to consult the journal and books of learned authors. I also consulted articles published in various newspapers and magazines related to the matter.

PLAN OF THE WORK:-

The present work is organized into nine chapters excluding this introduction which deals with Problem of white collar crimes in India.

In **Chapter-I** an effort has been made to trace out the historical background of white collar crimes and further Developments. This chapter has been subdivided in the following headings: Concept and Definitions, Characteristic features of White Collar Crime.

Chapter-II deals with nature and scope of white collar crimes with legal basis and their classification.

The Chapter-III is “Crime Relating to Essential Commodities” with penal provisions under the essential commodities Act, 1955.

Chapter-IV deals “Crime relating to Tax Evasion” with concept, forms and causes, consequential effects of tax evasion and avoidance. With brief laws explanation: towards reforms.

In this **Chapter-V** I have made my sincere attempt to throw light on white collar crimes- the emerging trends in India.

CHAPTER-I

WHITE COLLAR CRIMES: CONCEPT AND DEFINITIONS

A RETROSPECT-HISTORICAL BACKGROUND:

Since World War II, a most significant and recent development in criminology has been the emergence of the concept “White Collar Crime” as an area of scientific enquiry. The crime of this nature, of course, is not at all a new one, but the generalization of such phenomena and the incorporation of facts concerning il legal behavior of the higher classes into theories of crime causation is an outcome of the recent research in this field. The literature in the shape of speeches and publication produced by Edwin Sutherland, not only gave the name “White Collar” to this new area, but stimulated wide-spread criminology circles concerning the appropriateness of this concept as a legitimate focus of research and theory.’

Perhaps, the earliest documented case of white-collar crime law dates back to 15th century² England. There has been a case popularly known as the *Carrier’s case us* 1473. Where the agent was entrusted to transport wool and he attempted to steal some of it for him. Therefore the Star Chamber and Exchequer Chamber of the English Court of Law adopted the ‘breaking bulk’ doctrine as it constituted the crime of larceny.

However, the growth of industrial capitalism in the eighteenth century ushered a new history of crime and criminality. The very base of industrial capitalism is based on coercion and robbery. Now, before we discuss the topic let us understand the meaning of capitalism. In the words of V.L. Lenin, “Capitalism is the name given to the social system under which the land, factories, implements, etc. belong to a small number of landed proprietors and capitalists, while the mass of a people possess no property or very little property and are compelled to hire themselves out as workers. The land owners and factory owners hire workers and make them produce wires of different kind which they sell on the market.

¹See, JanaHRaj Jai, “White Collar Crimes — Naked Exposures” 1" Edition 1987, Pg no. 6

² Information available at, <http://money.howstuffworks.com/white-collar-crime3.htm>

The factory owners furthermore, pay the workers only such a wage as provides a bare subsistence for them and their families, while everything that the worker produces over and above these amount goes to the factory owner's pocket as his profit.”

Seen in this context, since there has been nothing to the major mass of the society except their bare subsistence, they were left with no better option than to sell their labour-power to survive. Whereas, the exploiting class, generally termed as the bourgeoisies, took the advantage of the situation and made more and more wealth out of the labours of the working class. Consequently, the wealth remained concentrated in the hands of only certain class of people, where most of them formed a part of the exploited class left with no freedom for work but to sell their labour-power.

According to the Parliamentary Reports, it has been found that the British East India Company, only within their first ten years of colonial rule in India extorted wealth from the Indians in the name of ‘gifts’ which worth round six million pound sterling. Therefore, there can be no denial of the fact the very structure of the industrial capitalism is built on crimes and criminality.

Therefore, as being discussed, the birth of white collar crimes took place in the Industrial Revolution in Western industrial societies which led a vast impact all throughout the globe. The developing countries, which at that time were the colonies of the great European Nations, were the worst victims of these crimes so committed against them. New companies rose into power, they were able to squelch competitors and then implement monopolistic policies without fear of being outsold by other companies. The public had to pay outrageously exorbitant prices for the same thing that was available previously at a much cheaper rate. The reason behind the exorbitant rise in the price rate was nothing but the corporate greed.

IN THE 2000s, white-collar crime has become a topic of almost daily news. The white-collar crime that caused the bankruptcy of Enron Corporation resulted in financial losses exceeding \$66 billion to stockholders, and likely helped lead to the recall of the governor of California. Massive violations of laws pertaining to improper investments in mutual funds and large banking firms in the United States have resulted in major losses to legitimate investors, whosnnufne losses are still being calculated.

The use of share holders' assets to fund the lavish private lifestyles of corporate chief executive officers, presidents, and chairs of the board of large corporations are becoming the fodder of scandal and media.

Broadly understood the phrase "white collar crime" can be defined as:

*Any behavior that occurs in a corporate and/or individual occupational context; and, that is committed for personal and/or corporate gain; and/or, **violates** the trust associated with that individual's and/or corporation's position and/or status; and that is a violation of any criminal law, civil law, administrative law, rule, ruling, norm, or regulation condemning the behavior.*

This definition is necessarily both sociological and legalistic in nature, and therefore includes any behavior that may be socially defined as unethical or immoral, as well as behavior that is not legally defined as an offense. In addition, the definition does not include Sutherland's requisite that the violation be "committed by a person of respectability and high social status." This description was not included because white-collar crimes can be committed by persons who do not necessarily hold "high social status."

CONCEPT AND DEFINITIONS

Concern about traditional and conventional criminality has received the attention of the criminologists, sociologists, members of the law enforcement agencies and others right from the earlier times. Most of the research that has taken place in the area of crimes has placed its thrust on the causation, extent and impact of traditional crimes and very little attention seems to have been paid to the class of criminality which is mostly undertaken by the members of middle and upper strata of the society for the purposes of economic gain. These criminal activities which are undertaken just for economic gain are more costly and more dangerous and can have highly deleterious and disastrous effect on the economic development of the state. Such criminogenic behavior indulged in by the rich and powerful members of society has been termed by Prof. Sutherland as white-collar crime.¹⁰

There are certain anti-social activities which the persons of upper strata carry on in course of their occupation or business. These anti-social activities are called white-collar crime. These activities for a long time were accepted as a part of usual business tactics necessary for a shrewd professional man for his success in profession or business. E. H. Sutherland defined a white-collar criminal as a person of the upper socio-economic class who violates the criminal law in the course of his occupational or professional activities. White-collar crime was more dangerous to society than ordinary crimes because of greater financial losses and because of the damage inflicted on public morals.

White-collar crimes account for enough violations of law. By comparison, the instances of white-collar crimes are more than the conventional type of crimes such as theft; burglary, and arson. The loss incurred through white-collar crimes is far higher than that of the conventional type. In the American Context, it has been estimated that losses from such crime may be as high as 200 billion dollars every year. In India also, such type of crimes are increasing day by day in view of rampant corruption.

This crime and its consequences are recognized from centuries which categorize number of crimes. Mostly business and government professionals are involved in series of frauds termed as white-collar crime because these are lucrative, comparatively risk-free, and nearly socially up to standard. These activities for a long time were accepted as a part of usual business tactics necessary for a shrewd professional man for his success in profession or business. Due to high occurrence of these crimes, security officials plan modern technique to fight back through prevention, investigation, and prosecution. When the term white-collar crime is conversed, people are encouraged to think decisively about the nature of crime, law, and criminal justice. In the criminal justice system, the focal point of the investigative efforts on the crimes of the poor. If it is viewed from same legal eye of the state, the crimes of the powerful are hidden. White-collar crime is defined as "those illegal acts which are characterized by deceit, concealment, or violation of trust and which are not dependent upon the application or threat of physical force or violence.

⁹Information available at, LAWRENCE M. SALINGER, ARKANSAS STATE UNIVERSITY GENERAL EDITOR JUNE 2004(pdf format)

¹⁰See, Abdul Latif Want, "White Collar Crime : Its Concept" Kashmir University Law Review, Vol.6, 1999, Pg. 31

Individuals and organizations commit these acts to obtain money, property, or services; to avoid the payment or loss of money or services; or to secure personal or business advantage. Generally the white collar criminals commit range of frauds to get personal financial gain. White collar crimes do not show any vicious activity, but the extent of these crimes are intense and it can bring about great economic loss for companies, investors. This crime is pervasive in almost all the professions and occupations in our society. The problem is quite acute, both in terms of variety and the extent of white-collar criminality. The report of Santhanam Committee in its findings gave a vivid picture of white-collar crimes committed by persons of respectability such as businessmen, industrialist, contractors and suppliers as also the corrupt public officials¹.

Necessity is not always the motive behind the commission of a crime. This idea evolved with the Criminologist and Sociologist **Edwin H. Sutherland**, in the year 1939, who popularized the term 'white collar crimes' by defining such a crime as one **"committed by a person of respectability and high social status in the course of his occupation."** Sutherland also included crimes committed by corporations and other legal entities within his definition.

Sutherland's study of white collar crime was prompted by the view that criminology had incorrectly focused on social and economic determinants of crime, such as family background and level of wealth. Sutherland was of a view that, crime is committed at every level of society and by persons of widely divergent socio-economic backgrounds. In particular, according to Sutherland, crime is often committed by persons operating through large and powerful organizations. White collar crime, as Sutherland concluded, have a greatly underestimated impact upon our society²

It is true to the common knowledge that there are certain professions which offer lucrative opportunities for criminal acts and unethical practices which is very often overlooked by the general mass of the society. There have been crooks and unethical persons in business, various other professions, who tend to become unscrupulous because of no reason apart from the thirst of gaining more and more for themselves. These deviants have least regard for ethical and moral human values. Therefore, they carry on their illegal activities with impunity without the fear of loss of respect and prestige. These crimes are of the nature of 'white collar crimes' which is the essential outcome of the development of the competent economy of the twenty-first century³

¹ See, **Santhanam Committee Report**, pp 251-53.

White-collar crime is pervasive in almost all the professions and occupations in our society. The problem is quite acute, both in terms of variety and the extent of white-collar criminality. The report of Santhanam Committee in its findings gave a vivid picture of white-collar crimes committed by persons of respectability such as businessmen, industrialist, contractors and suppliers as also the corrupt public officials.

The white-collar crimes which are common to Indian trade and business world are hoardings profiteering and black marketing. Violation of foreign exchange regulations (i.e. FERA) and import and export laws are frequently resorted to for the sake of huge profits. Further, adulteration of foodstuffs, edibles and drugs which causes irreparable damage to public health is yet another white-collar crime common in India.

The complexity of tax-laws in India has provided sufficient scope for the tax-payers to evade taxes. It is to be noted that tax-evasion is illegal, but tax-avoidance not. Tax-evasion implies non-payment of tax due to be paid, the tax-avoidance signifies arranging the spread over of one's income in such a way that it does not incur tax-liability legally and lawfully. In the profession of medicine, most common instances of white-collar criminality are illegal abortions, false medical certificates and unnecessary prolonged treatment in many cases. The usual legal and professional violations committed by lawyers are: advising organized criminals, aiding in performing false claims, engaging professional witness, fabricating false evidence etc. In the engineering profession, underhand dealing with contractors and suppliers, passing of sub-standard works and materials and maintenance of bogus records of work. Charged labour are some of the common examples of white-collar crime.

Corruption is also a well known white-collar crime. It is not limited to the concept of bribes or illegal gratification taken by public servants.

In its wider sense, corruption includes all forms of dishonest gains in cash, kind or position by persons in government and those associated with public and political affairs. The two government departments which have been traditionally notorious for corruptions in the country are those of police and public works.¹⁴

¹² See, Edwin Sutherland- "**Is White Collar Crime a Crime?**" (American Sociological Review April 1945), pp. 132-137

¹⁴ See, N.V. Paranjape, "**Criminology and Penology**", 14th ed., central law publication.

12 Steps Path to White Collar Crime

Viewed circumstantially appears to be, there is a 12 Step path to white collar crime that involves:

- Step 1 occurs when the individual is given a position of power.
- **Step 2** happens when the person realizes he has power that he can use for their own financial benefit.
- **Step 3** occurs when other powerful people in the organization (referred to as drivers) turn a blind eye or condone the abuse of power.
- In step 4 other passive observers become caught up in the activity because they realize that it offers them an opportunity.
- Other more reluctant participants are drawn in by their superior at step 5.
- **Step 6** is when distrust of those involved in the activity starts to arise.
- The perpetrator recognizes his ability to exploit those in a vulnerable position within the company — this is step 7.
- The group uses bullying tactics in step 8 in order to protect their illegal activities.
- By step 9 the perpetrator is addicted to the illegality of his activities. He starts taking bigger and bigger risks.
- At step 10 participants in the illegal activity begin to have ethical doubts about their behavior.
- Step 11 is reached when a whistleblower has the courage to reveal what has been going on. The perpetrator loses his control over the situation.
- The final step is reached with the perpetrator either admitting to his illegal actions, and asking for forgiveness, or trying to deny his involvement despite mounting evidence.

⁴ Information available at, <http://www.publishyourarticles.net/> “ Essay on White Collar Crime in India,” .

Not only can participants of white collar crime become addicted to the excitement of their illegal activity, but it can also be addiction to alcohol or drugs that drives them to such crime in the first place. ”

There are plethoras of opinions and findings vis-a-vis the definition of white-collar crimes, which is not only an intricate task but also an evolving and non-static concept. The definitions which are offered by legal scholars vary both across and within disciplines and linguistic practices.

Right from 1939 when Sutherland introduced the concept of white-collar crime into the field of criminology, a great debate and controversy with regard to the meaning and the nature of white-collar crime has been generated amongst the writers in this field. Sutherland’s definition of white-collar crime has been vehemently criticized and some writers have even entertained a doubt as to the whether white-collar crime is a crime in real sense of the term. By analyzing Sutherland’s definition of white-collar

”Information available at, <http://www.alcoholrehab.com/>(“Addiction and White Collar **Crime**”)crime in the light of criticism leveled against the same and to see whether the same and to see whether the same holds good in the face of present day challenges or needs to be modified or expanded to meet these challenges and to make it clear that white-collar crime is a crime which is more dangerous than traditional crime.”⁶

Professor Sutherland names such violations of law in upper socio-economic class as “white-collar crime” and broadly defined a white-collar crime as:

“A Crime committed by a person of responsibility and high social status in the course of his occupation.” The term white collar is in reference to the dress shirts that are commonly worn by office workers. It is used as a contrast to *blue collar* *workers* who are involved in manual labour and will usually come from the working classes. The above definition of white-collar crime has five attributes, namely:

- a) It is a crime;
- b) Committed by a person of respectability;

- c) Of high social status;
- d) In the course of his profession or occupation, and
- e) It is usually a violation of trusts.¹⁷

As **Caldwell** has pointed out:

- 1) White collar crime is a non legal term which refers to certain criminal acts, such as embezzlement and bribery, but does not specifically name the criminal acts to which it has reference;
- 2) It refers to a certain type of person, namely, a member of the upper socioeconomic class, but does not provide us with specific criteria by which to determine the social class of the person involved; and
- 3) The criminal law in defining acts that are usually referred to by the term “white-collar crime,” with a few exceptions, does not make any distinction regarding the SOCIAL class of offenders.

It should be clear, therefore, why there are no official sources of criminal statistics by which to estimate the amount of white collar crime.¹⁹

- **Black’s Law Dictionary** defines white-collar crime as “a non-violent crime usually involving cheating or dishonesty in commercial matters.
- **The Oxford English Dictionary** defines the white-collar criminal as "a person who takes advantage of the special knowledge or responsibility of his position to commit non-violent, often financial, crimes."
- **The American Dictionary of Criminal Justice** more specifically defines white-collar crime as "nonviolent crime for financial gain committed by means of deception by persons whose occupational status is entrepreneurial, professional or semi-professional and utilizing their special occupational skills and opportunities."²⁰

Sir PValter Reckless, an eminent American criminologist suggests that white collar crime represents the offences of businessmen who are in a position to determine the policies and activities of business. Referring to this variety of the upper world of crime, *Barnes* and *heaters* quoted *Lord Acton* who said, “Power tends to corrupt and absolute power tends to corrupt absolutely”. Wherever citizens of a particular community become apathetic to the working of their Government, grafts, comiption and alliances between public servants and the criminal world are common phenomenon’s resulting into breach of trust, fraud and other malpractices.

During the Truman administration in U.S.A. the well known “Fine presenters” and “Friendship Racket” operated between the high ups close to President and contractors who procured war contracts. *Bruce CnPon’s* ‘be War Lords of Washington”, best reveals the story of the callousness of some businessmen during World War II. It indicates the indifference, greed, inaptness and arrogance of many of those responsible for conducting a war and how they shelved of the democratic ideals for their personal gain while performing their official duties. The reasons for such deals remaining undetected as pointed out by Sutherland was that “the fine line between criminal activity and immorality either in business or in government is often difficult to discern”. In the **Administration Improvement Act (AIA) of 1979** the U.S. Congress defined white collar crime as “an illegal act or series of illegal acts committed by non-physical means and by concealment or guile, to obtain money or property or to obtain business or personal advantage. ²¹

Dartung defines a white-collar offense as a violation of law regulating business, which is committed for a firm by the firm or its agents in the conduct of its business.” **Cressey** seems implicitly to be using a wider concept in accordance with Sutherland’s explicit definition-a concept broad enough to include also embezzlement. Moreover there are some who argue that differentials of power and influence are the keys to identify, satisfactorily frame, and unravel fundamental questions about crime and crime control.

¹⁹See, E.H. Sutherland, “**White Collar Crime**”, 1961

²⁰Information available at, <http://www.publishyourarticles.org/knowledge-hub/essay-on-white-collar-crimes-in-india.html>

For example, investigations of sexual harassment have shown that the offender has always been of a superior status than that of the victim. Therefore the principle reason propounded behind the commission of a white collar crime is that of greed and arrogance and not of necessity or any compulsion. White collar crimes throw light on the diverse criminal behavior generally. Abuse of trust means exploitation of fiduciary position of the agent responsible for the safe custody, discretion, information or for property rights. Here since the trust crime is being committed by citizens wearing both blue collars and white collars. Similar instance can be done as that of adulteration of food, where this type of offence is committed not only by the upper class people but also by middle class businessmen involved in the food business. Therefore we should not always peep into the offender's wardrobe and his official position but consider the modus operandi of his misdeeds and the ways he exploits. Whatever the merits of the position, they hold strong that in white collar crimes the offenders are not always powerful and the victims are ordinary citizens.²²

Therefore, By above all elaborations, we can say that **White-collar** crime is a **broad term that encompasses many types of nonviolent criminal offenses involving fraud and illegal financial transactions. White-collar crimes include bank fraud, bribery, blackmail, counterfeiting, embezzlement, forgery, insider trading, money laundering, tax evasion, and antitrust violations.** Though white-collar crime is a major problem, it is difficult to document the extent of these crimes because the Federal Bureau of Investigation's (FBI) crime statistics collect information on only three categories: fraud, counterfeiting and forgery, and embezzlement. All other white-collar crimes are listed in an "other" category. Nevertheless, law enforcement officials agree that white-collar crime is a major problem.²³

²¹ This definition focuses on characteristics of the offence as opposed to Sutherland's focus on the offender as a high-status person. Although avoiding the problem of social status, the AIA definition fails to differentiate between persons who commit for personal gain and those who do so primarily on behalf of an employer.

White collar crimes advert to that category of crime that tends to be committed by professionals. Securities Fraud, Insider Trading, Bank Fraud, Tax Fraud, and Money Laundering are all examples of white-collar crime.²²

“White collar violations are those violations of law to which penalties are attached that involve the use of significant power, influence or trust in the legitimate economic or political institutional order for the purpose of illegal gain or to commit an illegal act for personal or organizational gain”. —

Albert Reiss and Albert Biderman...

White Collar Crime falls under the purview of Criminal law. White collar crime began to capture the attention of the prosecutors and the public in the mid-1970's.[1] The FBI defines it very simply as “lying, cheating, and stealing” and it is classified by the Department of Justice as “non violent illegal activities which principally involve traditional notions of deceit, deception, concealment, manipulation, breach of trust, subterfuge or illegal circumvention.” Commercial fraud, consumer/internet scams, E-scams & warnings, identity theft, credit card fraud, phone/telemarketing fraud, adoption scams, work at home scams, jury duty scams, healthcare fraud, insurance fraud, Medicare fraud, bankruptcy fraud, mail fraud, stages auto accidents, government fraud, pump and dump stock scams and securities fraud are all examples of fraud-based white collar crime. There are many other crimes, however, that are predominantly identified as white collar crime as well, including the following: public corruption, tax evasion, bribery, counterfeiting, money laundering, embezzlement, kickbacks, environmental law violations, economic espionage, trade secret theft, insider trading on the stock market, illegal pharmaceuticals, antitrust violations, and other forms of dishonest business schemes.²⁵

²² Schmalleger Frank, “Criminology Today”, Prentice Hall, Englewood Cliffs, New Jersey.

²³ <http://www.lawbrain.com/> Find Law Resources .

Information available at, <http://www.drt.co.in/>, DRT, SARFAESI Act, “White Collar Crime and its changing dimensions”, Dec 30“, 2011

As an alternative to the socio-economic definition, many define “white-collar crime” based instead upon the manner in which the crime is committed. **In 1981, the United States Department of Justice** described white-collar crime as:

Non-violent crime for financial gain committed by means of deception by persons whose occupational status is entrepreneurial, professional or semi-professional and utilizing their special occupational skills and opportunities, also, nonviolent crime for financial gain utilizing deception and committed by anyone having special technical and professional knowledge of business and government, irrespective of the person's occupation.

This definition focuses on the use of deception as the criminal means. The defendant, however, still must be at least “semi-professional” or have “special technical and professional knowledge.” Thus, in some ways, this definition is still too narrow. Not all defendants in white collar cases have professional or semi-professional status, nor do they necessarily possess special skills. A defendant in a tax fraud or false claims case, for example, might have neither of these characteristics.

Perhaps a better way to look at white collar crime is to focus on the ways that practitioners and judges distinguish white collar crime from common or street crime. A “**White collar**” **prosecutor or** defense attorney, for example, would more likely define “white collar crime” as crime that does not:

- a) Necessarily involve force against a person or property;
- b) directly relate to the possession, sale, or distribution of narcotics;
- c) directly relate to organized activities;
- d) directly relate to such national policies as immigration, civil rights, and national security; or
- e) directly involve “vice crimes” or the common theft of property.

²⁷ See, *ibid*

Sometimes the criminal statute itself will render almost all crimes charged under that statute “white collar” by definition. For example, charges brought under the securities fraud and antitrust criminal statutes are generally “white collar” crimes under the above definition. On the other hand, under some criminal statutes charges can be brought for both white collar and non-white collar offences depending on the nature of the defendant’s conduct. For example, conspiracy, extortion, and obstruction of justice are charges often brought in both white collar and non-white collar cases.

The most common and notable white collar crimes include crimes committed both in the corporate and governmental settings, and crimes committed by individuals.²⁶

That white collar crime is essentially connected with social status has been brought out in the following description given by a writer on Criminology.

“White-collar crime is most distinctively defined in terms of attitudes toward those who commit it. White-collar crime is definitely made punishable by law. It is convictable behavior. However, it is generally regarded by courts and by sections of the general public as much as less reprehensible than crimes usually punished by our courts, which may be designated “blue-collar crime”. Blue-Collar crime is the crime of the under-privileged; white-collar crime is upper or middle-class crime”. Just what proportion or section of the population must condone this type of behavior to constitute it as white-collar is not, and perhaps cannot be clear. Many courts and other authorities clearly distinguish between a man who illegally misrepresents the qualities of his products and a burglar or robber. Yet the very existence of the law penalizing the former type of act indicates an adverse attitude toward it, though ordinarily not of the same degree. The fact that white-collar crime is punished in less degrading ways than “ordinary crime” does not imply that the former is petty. Actually the society loses huge sums through white-collar crime. Some of the rackets we described in an earlier chapter are white-collar crimes; some are not. As Sutherland defines the term, most racketeering by officers of a labour union would not be white-collar crime; nor, apparently would the vice racket be

so defined.

Thus neither in terms of class status, business activity, attitudes, nor degree of seriousness can white-collar crime be wholly separated from other crime. Nevertheless, it is the somewhat distinctive attitudes and policies towards the offender in such cases which have been given significance in discussions of white-collar crime. It appears that even outside of business circles, white-collar crime is less reprehensible than ordinary crime, because low-class people often aspire to be white-collar criminals. Or if not, they at least accept the same individualism and the same value of materialism which the middle and upper classes accept. white-collar crime is attractive because it brings material rewards with little or no loss of status.²⁷

Santhanam Committee report on the Prevention of Corruption, to show the magnitude of white collar crimes prevalent in India. The report says:

*“The advance of technological and scientific development is contributing to the emergence of “mass society” with a large rank and file and small controlling elite, encouraging the growth of monopolies, the rise of a managerial class and intricate institutional mechanisms. Strict adherence to high standard of ethical behavior is necessary for the even honest functioning of the new social, political and economic processes. The inability of all sections of Society to appreciate in full this need results in the emergence and growth of white collar and economic crimes, renders enforcement of the laws, themselves not sufficiently deterrent, more difficult. Tax evasion and avoidance, share-pushing, malpractices in the share market and administration of companies, monopolistic controls, usury, under-invoicing or over-invoicing, hoarding, profiteering, sub-standard performance of contracts of constructions and supply, evasion of economic laws, bribery and corruptions, election offences and malpractices are some examples of white collar **crime**.²⁸*

²⁷See, 29th Law Commission Report 1966, Page-7, Chapter White Collar Crime.

This approach²⁹ highlights several facts about white-collar crime:

- It can be committed by an individual or by an organization or group of individuals.
- Deception, trickery, or fraud lies at the heart of white-collar crime.
- Most white-collar crimes emanate from otherwise legitimate occupational activity in which access to money or information makes possible the misuse of one or both of these resources.
- White-collar offenses sometimes lie on the border between illegal and unethical behavior, where what a company does may cause harm or even death without actually violating the criminal law. Many unethical offenses are adjudicated in civil proceedings that determine compensation, rather than in criminal court, which determines guilt.

In the words of Ramsay Clark, one time Attorney General of India:

“White collar crime is the most corrosive of all crimes. The trusted prove untrustworthy, the advantaged dishonest. It shows the capability of the people with better opportunities for creating a decent life for themselves to take property belonging to others. As no other crime, it requisition our more fibre.”³⁰

²⁹ See, K.D. Gaur, Criminal Law and Criminology “WCC and Its Impact on Society” 2002, Pg.no.283

³⁰ See, Jay S.Albanese, “Criminal Justice,3/e,” 2005, chapter-5, pg.105, Pearson

CHAPTER-II

NATURE AND SCOPE OF WHITE COLLAR CRIMES

From the discussion in another part of the Santhanam Committee Report, it would appear, that the Committee attached great importance to the emergence of offences and mal-practices known as "white-collar" crime. We quote the relevant portion:'

"The advantage of technological and scientific development is contributing to the emergence of "mass society", with a large rank and file and 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 behavior is necessary for, even and honest functioning of the law social, political and economic processes. The inability of all sections of society to appreciate in full this need results in the emergence and growth of white-collar and economic crimes, renders enforcements of the laws, themselves not sufficiently deterrent, more difficult. This type of crime is more dangerous not only because the financial stakes are higher but also because they cause irreparable damage to public morals. Tax-evasion and avoidance, share-pushing, mal-practices in the share market and administration of companies, monopolistic control, usury, under-invoicing or over-invoicing, hoarding, profiteering, sub-standard performance of contracts of construction and supply, evasion of economic laws, bribery and comiption, election offences and mal-practices are some examples of white-collar crimes."

Thus, E. H. Sutherland has presented a brief and general description of white-collar criminality on a framework of argument regarding theories of criminal behaviour. That argument, stripped of the description, may be stated in the following propositions:

1. White-collar criminality is real criminality, being in all cases in violation of the **criminal law**.
2. White-collar criminality differs from lower-class criminality principally in an implementation of the criminal law, which segregates white-collar criminals administratively from other criminals.

3. The theories of the criminologists that crime is due to poverty or to psychopathic and sociopathic conditions **statistically** associated with poverty are invalid because, first, they are derived from samples which are grossly biased with respect to socioeconomic status; second, they do not apply to the white-collar criminals; and third, they **do not** even **explain** the **criminality** of the lower class, since the factors are not related to a general process characteristic of **all criminality**.
4. A theory of criminal behaviour which will explain both white-collar criminality and lower-class criminality is needed.
5. A hypothesis of this nature is suggested in terms of differential association and social disorganization.⁴

THE LEGAL BASIS OF WHITE-COLLAR CRIMES AND THEIR CLASSIFICATION

The majority of laws underlying white-collar crime differ from conventional criminal laws in five ways: (1) in origin, (2) indetermination of responsibility, or intent, (3) in philosophy, (4) in enforcement and trial procedure, and (5) in sanctions used to punish violators. In the first place, most white-collar laws have been legislatively created as of a given date, and some of them are in derogation of common-law principles. These, then, are a *mala prohibita*, crimes created by legislative bodies, in contrast to most of the conventional criminal code, which is viewed as merely a legislative expression of “natural” crimes, *mala in se*. Secondly, and most regulatory laws define their violations as misdemeanors rather than the implicitly more serious felonies of penal law. Furthermore, the question of intent, so prominent in the criminal code, is irrelevant to conviction under many regulatory laws, although intentional violations, if proved, many increase the punishment. In these respects, white-collar violations are legally much more like traffic laws and municipal ordinances than statues of the criminal code.

The legal distinctiveness of white-collar legislation is seen even more clearly in procedural variations from those more commonly used in conventional criminal cases.

⁴See for details, Gilbert Geis & Robert F. Meier, “White Collar Crimes” 1977, Chapter — 2, “White Collar Criminality — Edwin Sutherland” p.38-39

Most of the federal regulatory legislation and much of its counterpart on state levels rely for enforcement not on the police and public prosecutors, but on specially-created investigatory and enforcement bodies. Probably the most familiar of these is the Bureau of Internal Revenue, but many similar agencies exist within the framework of other legislation. Of course, in the final analysis, police and the criminal court can be used, but in general, the enforcement of such law is not a common police activity.

In white-collar legislation, the same agency or commission which directs investigation also conducts hearings on cases and administers numerous punishments or sanctions short of prison terms or the other conventional penal sanctions. In a strict sense, these hearings are not trials, and, therefore, the formal criminal procedures are often absent, as, indeed are the many protections given defendants in criminal proceedings. Of course, the findings of such hearings may be appealed to conventional courts, and here the precise, if more cumbersome, formal procedural rules apply. This administrative process of investigation and hearing parallels more closely the practices in juvenile court than those in its criminal counterpart.

Since laws proscribing *mala prohibita* are remedial in nature, they are liberally construed, so that the goal remains prevention or correction of existing illegalities rather than the repression or punishment of violations. In this respect, various sanctions other than the criminal punishments of imprisonment, probation, and fines are used by the enforcing agencies. Violators of such laws may be subjected to warnings; injunctions; consent decrees; seizure and destruction of products; civil suits for damages, like the treble-damage suits sanctioned in the case of OPA violations during the wartime emergency; license revocation; where applicable; and similar informal or civil processes. Legislation also provides for the use of more traditional sanctions by criminal courts, however, in cases warranting such action. The discretion to press criminal charges rather than civil action is another function of the enforcing agency. Sutherland's survey of the records of seventy large corporations showed a total of 980 adverse decisions against these companies, 158 of which were criminal proceeding 298 made by civil courts, 129 by equity courts, while the remainder were administrative actions discussed above.

The relatively infrequent use of criminal sanctions is undoubtedly reflection of many factors including the high social status of many violators and the lack of consensus about the “criminal nature” of their behavior, but it is also consistent with the remedial philosophy of the laws in question. Since the purported aim of enforcement is to correct economic wrongs, prevent public injury, and the like, cases are more likely “settled” or wrongs prevented from continuing in contrast to the eye-for-eye philosophy implicit in conventional criminal actions. Certainly, burglar and bank- robbers are not merely ‘Earned’ nor issued cease-and-diesis orders.

Then, too, the conventional criminal law is based on the theory of individual responsibility and guilt, the *men rea* nature of intent, that inconsistent with and difficult to apply in many white-collar cases. Quite often, white-collar violators are corporations, cooperatives, or labour unions and while legal respon.sibility may fix to a corporation as it does to a person, the use of the criminal sanctions of imprisonment or probation virtually impossible in such cases. The diffuse nature of the perpetrators (the corporate body), as well as the diffuse nature of the victim, does not fit many white-collar cases to the usual criminal formation. Then, too, the virtual absence of the necessity of intent, of *men rea* or the part of violators makes criminal sanctions seem inappropriate. Of course, in any behavioral definition of crime, the focus is not on behavior tried, but on behavior triable. Sutherland puts it “An unlawful act is not defined as criminal by the fact that is punished, but by the fact that it is punishable.” This means that while one person may be tried in a criminal court for behavior remarkably similar to that of another which, at the discretion of the investigating agency, results only in a civil suit or a warning, both would be “criminals,” since the emphasis is on the behavior in question rather than the formality of legal process...⁵

Hence, the origin of the “white-collar crime” concept derives from a socialist, anti-business viewpoint that defines the term by the class of those it stigmatizes. In coining the phrase, Sutherland initiated a political movement within the legal system. This meddling in law perverts the justice system into a mere tool for achieving narrow political ends. As the movement expands today, those who champion it would be wise to recall its origins.

⁵ See, Gilbert Geis , Donald J. Newman, “ **White-Collar Crime: An overview and Analysis**, 1977, Pg. No. 51

For those origins reflect contemporary misuses made of criminal law—the criminalisation of productive social and economic conduct, not because of its wrongful nature but, ultimately, because of fidelity to a long- discredited class- based view of society.⁶

It is peculiar phenomenon that those indulge in white-collar crime develop some amount of immunity to criminal action. The subject of white-collar crime is of immediate interest to the criminologist in arriving at a workable theory of crime. This technological and scientific development is contributing to the emergence of “mass society” with a large rank and file and small controlling elite; encouraging the growth monopolies, strict adherence to high standard of ethical behavior is necessary for the true and honest functioning of the new social and political processes. This type of crime is more dangerous not only because irreparable . damage to public morals. Tax evasion and avoidance, share pushing, malpractices controls, usury, under voicing or over voicing, boarding, profiteering, sub-standard performance of contracts of construction and supply, evasive of economic laws, bribery and corruption, election offences and malpractices are some examples of white-collar crime.⁷

CLASSIFICATION:

According to Edelhertz, ever the legalist in the best sense of that increasingly derogatory term, presents a four-category classificatory system of economic crime—a term he prefers to white-collar crime. These categories are:

1. Crimes by persons operating on an individual, ad hoc basis (tax violations, credit-card fraud, charity frauds, unemployment insurance, and welfare fraud.)
2. Crimes committed in the course of their occupations by those operating inside business, government, or other establishments in violation of their duty or loyalty and fidelity to employer or client (computer frauds, commercial bribery, kickbacks, “sweetheart” contracts, embezzlement, expense-account padding, and conflicts of interest.)

⁶ See, John S.Baker, “**The Sociological origins of” White collar crime**” October 4, 2004, Louisiana state University Law Centre.

See, Girimj Shah, “**White Collar Crimes**” 1st Edition, 2002, Pg. No. 16.

⁷ See, 29" **Law Commission Report, 1966**, Pg.No.10,11

3. Crimes incidental to, and in furtherance of, business operations, but not the central purpose of the business (fraud against the government, food and drug violations, check kiting, housing-code violations, and other forms of misrepresentation).
4. White-collar crime as a business or as the central activity (bankruptcy), land, home improvement, merchandising, insurance, pyramid, vanity, stocks and bonds, and related frauds and schemes.

The Government of India appointed in 1962 a Committee to review the problem of corruption and to make suggestions on various matters connected therewith. One of the terms of reference of the Committee was, "to suggest changes in the law which would ensure speedy trial of cases of bribery, corruption and criminal misconduct and make the law otherwise more effective.

The substantive law relating to bribery, corruption and criminal misconduct is contained in the Indian Penal Code and the Prevention of Corruption Act, 1947, the procedural law in the Criminal Procedure Code, Criminal Law Amendment Act, 1958 and some special rules of evidence relating to such cases in the prevention of Corruption Act. The working of relevant provisions of these enactments in pr

osecution in courts and also at the stage of investigation have disclosed that certain changes in the law are required in order to ensure speedy trials and more effective results. We have examined the existing provisions in the light of experience gained in numerous cases, and also in the context of social changes and economic objectives which have created new problems.

The Indian Penal Code was enacted in 1860, and thought it has been amended here and there, its main structure has continued intact during the last 100 years and more. 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. But the social and economic structure of India has changed to such a large extent, especially during the last 17 years of freedom that in many respects the Code does not truly reflect the needs of the present day. It is dominated by the notion that almost all major crimes consists of offences against person, property or State.

However, the Penal Code does not deal in any satisfactory manner with acts which may be described as social offences having regard to the special circumstances under which they are committed and which have now become a dominated feature of certain powerful sections of modern society.

Categories of crimes-As per Santhanam Committee report are as follows:

- 1) “Offences calculated to prevent or obstruct the economic development of the country and endanger its economic health;
- 2) Evasion and avoidance of taxes lawfully imposed;
- 3) Misuse of their position by public property, issue of licenses and permits and similar other matters;
- 4) Delivery by individuals and industrial and commercial undertaking of goods not in accordance with agreed specifications in fulfillment of contracts entered into with public authorities;
- 5) Profiteering, black-marketing and hoarding;
- 6) Adulteration of foodstuffs and drugs;
- 7) Theft and misappropriation of public property and funds; and
- 8) Trafficking in licences, permits, etc.”

Corporate crimes as put by Sutherland-In his book “White-collar crime” Sutherland examined the criminal activities of 70 of the biggest corporations in America, and focused attention on the following types of law-breaking by them:-

- 1) Restraint of trade.
- 2) Misrepresentation in advertising.
- 3) Infringement of patents, trademarks and copyrights.
- 4) Unfair labour practices.
- 5) Frauds in business.

Various Types of White Collar Crime In India are:

- **Bank Fraud:** To engage in an act or pattern of activity where the purpose is to defraud a bank of funds.
- **Blackmail:** A demand for money or other consideration under threat to do bodily harm, to injure property, to accuse of a crime, or to expose secrets.
- **Bribery:** When money, goods, services, information or anything else of value is offered with intent to influence the actions, opinions, or decisions of the taker. You may be charged with bribery whether you offer the bribe or accept it.
- **Cellular Phone Fraud:** The unauthorized use, tampering, or manipulation of a cellular phone or service. This can be accomplished by either use of a stolen phone, or where an actor signs up for service under false identification or where the actor clones a valid electronic serial number (ESN) by using an ESN reader and reprograms another cellular phone with a valid ESN number.
- **Computer fraud:** Where computer hackers steal information sources contained on computers such as: bank information, credit cards, and proprietary information.
- **Counterfeiting:** Occurs when someone copies or imitates an item without having been authorized to do so and passes the copy off for the genuine or original item. Counterfeiting is most often associated with money however can also be associated with designer clothing, handbags and watches.
- **Credit Card Fraud:** The unauthorized use of a credit card to obtain goods of value.
- **Currency Schemes:** The practice of speculating on the future value of currencies.
- **Educational Institutions:** Yet another field where collar criminals operate with impunity are the privately run educational institutional in this country. The governing bodies of those institutions manage to secure large sums by way of government grants of financial aid by submitting fictitious and fake details about their institutions. The teachers and other staff working in these institutions receive a meager salary far less than what they actually sign for, thus allowing a big margin for the management to grab huge amount in this illegal manner.
- **Embezzlement:** When a person who has been entrusted with money or property appropriates it for his or her own use and benefit.

- **Environmental Schemes:** The overbilling and fraudulent practices exercised by corporations which purport to clean up the environment.
- **Extortion:** Occurs when one person illegally obtains property from another by actual or threatened force, fear, or violence, or under cover of official right.
- **Engineering:** In the engineering profession underhand dealing with contractors and suppliers, passing of sub-standard works and materials and maintenance of bogus records of work-charged labour are some of the common examples of white collar crime. Scandals of this kind are reported in newspapers and magazines almost every day in our country.
- **Fake Employment Placement Rackets:** A number of cheating cases are reported in various parts of the country by the so called manpower consultancies and employment placement agencies which deceive the youth with false promises of providing them white collar jobs on payment of huge amount ranging from 50 thousands to two lakhs of rupees
- **Forgery:** When a person passes a false or worthless instrument such as a check or counterfeit security with the intent to defraud or injure the recipient.
- **Health Care Fraud:** Where an unlicensed health care provider provides services under the guise of being licensed and obtains monetary benefit for the service.
The white collar crimes which are common to Indian trade and business world are hoardings, profiteering and black marketing. Violation of foreign exchange regulations and import and export laws are frequently resorted to for the sake of huge profits. That apart, adulteration of foodstuffs, edibles and drugs which causes irreparable danger to public health is yet another white collar crime common in India.
- **Insider Trading:** When a person uses inside, confidential, or advance information to trade in shares of publicly held corporations.
- **Insurance Fraud:** To engage in an act or pattern of activity wherein one obtains proceeds from an insurance company through deception.
- **Investment Schemes:** Where an unsuspecting victim is contacted by the actor who promises to provide a large return on a small investment.
- **Kickback:** Occurs when a person who sells an item pays back a portion of the purchase price to the buyer.
- **Larceny/Theft:** When a person wrongfully takes another person's money or property with-the intent to appropriate, convert or steal it.

- **Legal Profession:** The instances of fabricating false evidence, engaging professional witness, violating ethical standards of legal profession and dilatory tactics in collusion with the ministerial staff of the courts are some of the common practices which are, truly speaking, the white collar crimes quite often practiced by the legal practitioners.
- **Money Laundering:** The investment or transfer of money from racketeering, drug transactions or other embezzlement schemes so that it appears that its original source either cannot be traced or is legitimate.
- **Medical profession:** White collar crimes which are commonly committed by persons belonging to medical profession include issuance of false medical certificates, helping illegal abortions, secret service to dacoits by giving expert opinion leading to their acquittal and selling sample-drug and medicines to patients or chemists in India
- **Racketeering:** The operation of an illegal business for personal profit.
- **Securities Fraud:** The act of artificially inflating the price of stocks by brokers so that buyers can purchase a stock on the rise.
- **Tax Evasion:** When a person commits fraud in filing or paying taxes. The complexity of tax laws in India has provided sufficient scope for the tax-payers to evade taxes. The evasion is more common with influential categories of persons such as traders, businessmen, lawyers, doctors, engineers, contractors etc. The main difficulty posed before the Income Tax Department is to know the real and exact income of these Professionals. It is often alleged that the actual tax paid by these persons is only a fraction of their income and rest of the money goes into circulation as 'black money'.
- **Telemarketing Fraud:** Actors operate out of boiler rooms and place telephone calls to residences and corporations where the actor requests a donation to an alleged charitable organization or where the actor requests money up front or a credit card number up front, and does not use the donation for the stated purpose.

- **Welfare Fraud:** To engage in an act or acts where the purpose is to obtain benefits (i.e. Public Assistance, Food Stamps, or Medicaid) from the State or Federal Government.
- **Weights and Measures:** The act of placing an item for sale at one price yet charging a higher price at the time of sale or short weighing an item when the label reflects a higher weight.

Hence, White Collar Crimes can be classified, inter alia,'⁶ in the following broad categories:

- (a) Commercial, banking and insurance fraud.
- (b) Foreign exchange violations including hawala transactions, under-invoicing exports or over-invoicing of imports and exports.
- (c) Violations of industrial, labour and environmental regulations.
- (d) Tax and duty evasion and smuggling. Duty evasion can be of customs of excise. Misuse of advance license is an offences in this category.
- (e) Adulteration of food and drugs.
- (I) Hoarding and black-marketing. This will be an offence only if the commodity is a statutorily controlled item.
- (g) Counterfeiting currency notes and coins.
- (h) Criminal misappropriation and criminal breach of trust, which generally involve also forgery of documents and falsification of accounts. Many directors and senior executives of companies commit these offences.
- (i) Cheating.
- p) Illegal antique deals.
- (k) Trafficking in drugs and money laundering of the proceeds.
- (i) Smuggling.
- (m) Chit fund frauds.
- (n) Bribery and other modes of corruption.

CHAPTER -III

CRIME RELATING TO ESSENTIAL COMMODITIES

INTRODUCTION

Human resource development of a nation is the barometer of its socio- cultural growth. This growth is mainly facilitated by the administrative efficiency depending upon the versatility and dynamism of the “socio — economic” legislations and their smooth implementation. However, in recent times the menace of bribery and comiption is plaguing progress, the curbing of which is *sine guo non* for effective benefits of the essential commodity laws leading to balanced national growth.

The Essential Commodities Laws are socio — economic penal legislations for the control over the production, supply, distribution and trade and commerce there in. These are basic necessity articles for survival and meaningful sustenance which means and includes medicinal drugs , foodstuffs, petroleum products, fertilizers , hank yarn made from cotton, raw jute and jute textiles, etc., as are listed to schedule provided in Section 2A of the Essential Commodities Act, 1955, at present containing 15 items. The Central Government is empowered to include any item of necessity whenever it feels so in the interest of the general public to the list.

The Law relating to essential commodities basically controls the production, supply and distribution, etc. the commodities paramount object of this being to secure equitable distribution and their availability at fair price.

The Principal Legislation in the Law is the Essential Commodities Act, 1955, amended in 2006, which extends to the whole of India and provides for diversification of powers governing the control over production, supply and distribution etc. of essential commodities. It forms along with The Essential Commodities (Special Provisions) Act, 1981 and The Prevention of Black Marketing and Maintenance of Supplies of Essential Commodities Act, 1980, the basic Legislative framework.

¹ For further details, see, Ranjeet Mahonty, “**The Essential Commodities law and its Enforcement in India**”, Orissa law Review, September—October 2011, Page no. 95

CONCEPT OF ESSENTIAL COMMODITIES AND ROLE OF ACT

The items declared as essential commodities under the Essential Commodities Act, 1955 are reviewed from time to time in the light of liberalized economic policies in consultation with the Ministries/Departments administering the essential commodities and particularly with regard to their production, demand, and supply. From 15 February 2002, the Government removed 11 classes of commodities in full and one in part from the list of essential commodities declared earlier. In order to accelerate economic growth and to benefit consumers, two more commodities have been deleted from the list from 31 March 2004. At present the list of essential commodities contains 15 items.

List of commodities declared essential under the Essential Commodities Act, 1955:

Declared under Clause (a) of Section 2 of the Act

1. Cattle fodder, including oilcakes and other concentrates.
2. Coal, including coke and other derivatives.
3. Component parts and accessories of automobiles.
4. Cotton and woolen textiles.
5. Drugs.
6. Foodstuffs, including edible oilseeds and oils.
7. Iron and Steel, including manufactured products of Iron & Steel.
8. Paper, including newsprint, paperboard and sawboard.
9. Petroleum and Petroleum products.
10. Raw Cotton either ginned or unpinned and cotton seed.
11. Raw Jute.
12. Jute textiles.
13. Fertilizer, whether inorganic, organic or mixed.
14. Yarn made wholly from cotton.

15. (i) Seeds of food crops and seeds of fruits and vegetables,
- (ii) Seeds of cattle fodder and
- (iii) Jute seeds.²

ROLE OF THE ACT

1. The Essential Commodities Act, 1955 (Act 10 of 1955) was made by Parliament in exercise of its legislative power under Entry 33 of List III of Seventh Schedule of the constitution by virtue of the Constitution (Third Amendment) Act, 1954. Reading S. 3 Essential Commodities Act with the preamble, it is obvious that the object of the is to provide for control of the production, supply and distribution of "trade and commerce in Essential Commodities in the interests of general public", so that the of such commodities are maintained or increased, and their equitable distribution secured, at fair prices to the general public. The enforcement and administration -- Essential Commodities Act, 1955 and the various control orders issued by the life and Central Government there under over a period of last three decades failed to achieve its main object of securing equitable distribution of Essential Commodities at fair prices to the consumer. Even Sri, Ajit Fania, former Union Minister of State for Food Civil Supplies admitted this fact in Parliament in the month of March 1986 but could not identify the reason thereof.

2. The Essential Commodities Act, 1955 has been amended from time to time to make it more effective. The Essential Commodities (Special Provisions) Act, 1981 (Act 18 of 1981) which is a temporary Act was brought into force w. e. f. 1-9-1982 would Although the preamble of the Act of 1981 tends to make one believe that main object of, enacting the said Act was to deal more rigorously with the black marketers and profiteers in Essential Commodities, paradoxically, the Essential Commodities Act, 1955 as amended by the Act 18 of 1981 not only failed to achieve its object but also did not have any impact on the white collar criminals, thereby defeating the objects of the Act viz., to ensure the speedy trial of the offenders and make available the essential Commodities at fair prices to the consumer. Our experience of the enforcement and working of the Essential Commodities Act reveals that it has no teeth to land that there are many loop-holes in the Act which require to be plugged by introducing suitable legislation to amend the existing Law.

² Sec.2 (a) of Essential Commodities Act, 1955 (as amended 2006).

3. **Confiscation:** - Sections 6-A to 6-C of the Act provides for confiscation of property of a trader who has committed an offence in respect of an essential commodity. Ever since the Essential Commodities Act, 1955 came into force, the State Governments booked innumerable cases against a number of erring traders and confiscated their goods u/s. 6-A of the Act. But the Police Officers of the Vigilance Cell, Civil Supplier Department, did not prosecute the traders in criminal Courts and the State Governments have been largely content with the confiscation of their property u/s. 6-A of the Essential Commodities Act. Even in a few cases the State- Government prosecuted the offenders before Criminal Courts they ended in acquittal. As a consequence thereof, u/s- 6-C (2) of the Essential commodities Act the State Governments are obliged to restore the value of the confiscated properties to the traders. Even after the commencement of the Act of 1981, the vigilance authorities have not been filing the charge-sheets against the erring traders in view of the obligation imposed u/s. 6-C(2) of the Essential Commodities Act to restore the value of the property confiscated from the offenders in the event of their acquittal by the Criminal Court. In effect S. 6-C (2) of the Essential Commodities Act is a handicap for the police to prosecute the offenders in the Criminal Courts. In identical Acts like A.P. Forest Act (1) of 1967 which provided both for confiscation of the timber as well as for prosecution of the offenders , a provision identical to S, 6-C(2) of the Essential Commodities Act has not been enacted by the legislature. The prosecution before a criminal Court and the Confiscation of the seized property by the authorities under the Forest Act, 1967 are made independent of each other, so that in the event of acquittal of the accused the State Government is not under an obligation to restore the value of the confiscated property to the accused. The Supreme Court of India in Divisional. Forest Officer V. Sudhakar Rao ³in 1986 Cr. L.J. 357 upheld the validity of the provisions of the A.P. Forest Act-in this regard. Parliament may therefore delete S. 6- C (2) of the Essential Commodities Act for effective enforcement of the provisions of the Essential Commodities Act, 1955 at the earliest.

4. The power to confiscate an Essential Commodity seized from a trader is conferred on the on the Gist. Collector and the Jt. Collectors u/S. 6-A of the Essential Commodities Act, if he is satisfied that there has been a contravention of any order issued by the central or State Government u/s. 3 of the E.C. Act‘ The nature of a confiscation proceeding is criminal or quasi-criminal as per the Full Bench Judgment of A.P. High Court in public prosecutor V Ramayya (1975 Criminal Law Journal

144) (F.B.) The word "Confiscate" means to appropriate to the State as-a penalty. It is a well-known that the Collector or the I.T Collector of a District is not adequately trained in law to exercise powers of confiscation, so as to administer criminal justice and enjoy the confidence of the public. Speaking for a constitution Bench of the Supreme Court Chief Justice Y. V. Chandrachud in Olga Telis case⁴ (ruled that: "the sweep of right to life conferred by Art. 21 of the Constitution is wide and far-reaching it includes right to means of livelihood and any person who is deprived of his right to livelihood except according to just and fair procedure established by law can challenge the deprivation as offending the right to life conferred by Art. 21 of the Constitution" Justice P.N. Bhagwati in his landmark Judgment in Maneka Gandhi's case ruled that the words "Procedure established by Law" in Art. 21 of the Constitution are words of deep meaning for all lovers of liberty and judicial sentinels and the procedure must be reasonable. Just and fair. Consequently the power of confiscation conferred u/s.6-A on the Dist. Collector does not and cannot be said to be satisfying the procedural requirements of Art. 21 of the neither Constitution of India nor does it inspire public confidence. Sec 6-C of the Essential Commodities Act provides for an appeal to the Govt., against the orders of confiscation made by the Collector u/s. 6-A of the E.C. Act. Hearing of an appeal and passing an order u/s. 6-C of the E.C. Act is also a quasi judicial criminal proceeding. The remedy now provided is like an appeal from Caesar to Caesar. The discharge of judicial or quasi judicial functions either u/s. 6-A or 6-C of the E.C. Act would inspire public confidence if these powers are conferred on a judicially trained person other than the Dist. Collector or Secretary to the Govt. or a Minister in the State Cabinet. At present the traders have been filing Writ Petitions under Art. 226 of the Constitution in the High Court against the orders of the appellate authority and taking advantage of an error of law or an apparent mistake in the orders passed by the Officers exercising powers of confiscation . On the other hand if the power of confiscation u/s. 6-A and appeal u/s. 6-C the E.C. Act are conferred on judicial authorities the interference by the High Courts would be restricted to only a few cases. It is therefore suggested that Parliament may amend S. 6-A and S. 6-C of the E.C Act and confer the power of confiscation on a judicial authority not below the rank of a Senior Civil Judge/Asst, Sessions Judge, U/s. 5-A If the E. C. Act and the appellate power u/s. 6-C of the E, C. Act on the High Court.

³ AIR 1986 SC328

⁴ AIR 1986 SC180

If the law is amended suitable on 'these lines, it would inspire public confidence and also minimize corruption among the Civil Supplies Officials who are entrusted with the enforcement of the provision of the E.C. Act. In this context it is worth recalling what Mr. Justice Arthur T Vanderbilt stated in his book "The Change of Law Reform 1955" at Pp 4-5:

“ . . . it is in the courts and not in the legislature that our citizens primarily 'feel the keen cutting edge of the law. If they have respect for the work for their Courts, their respect for law will survive the short-comings of every other branch of the Government but if they lost their respect for the work of the Courts, their respect for the law and order will vanish with it to the great detriment of society".

5. Prosecution:—If any person contravenes any order made u/s 3 of the E.C. Act, S. 7 provides for a maximum sentence of imprisonment which may extend to 7 years and a minimum of 3 months imprisonment and in the case of habitual offenders for a minimum of 6 months imprisonment. All the offences under the E.C. Act are warrant cases as defined by S. 2(X) of the Cr. P.C. triable as per the procedure provided Chapter XIX of Cr. P.C. for trial of warrant cases. S. 12-AA (1) (f) of E.C. Act virtually rendered the maximum prescribed sentence of imprisonment of 7 years nugatory for all practical purposes. The Act of 1981 created the Special Courts to try all the offences under the E.C. Act in a summary way, whereby, the power of the special Court to impose the sentence on conviction is restricted to 2 years. As sum- Mary trial of all the offences under the E.C. Act has been made mandatory in no case the Special Court can pass a sentence of imprisonment exceeding 2 years. Experience shows that it is very seldom that the big economic offenders are arrested by the law enforcing agencies. It is paradoxical that a Sessions Judge is required to preside over Special Court is impose a sentence not exceeding 2 years in case of conviction when u/s. 29(2) of Cr P.C. even Judicial First Class Magistrates are empowered to impose a sentence of imprisonment for a term not exceeding 3 years or fine not exceeding Rs. 5,000/- or of both. Assuming that the Parliament did not repose confidence in the Judicial First Class Magistrates to try and sentence an offender under the E.C. Act for a period of 2 years, the remedy provided by S. 12-AA by setting up a Special Court presided by a Sessions Judge cannot be said to be either a wise or an effective one.

The object of the Act in setting up the Special Court is to ensure speedy trial of the cases which is the fundamental right of the accused under Art.21 of the Constitution, The very object of ensuring speedy trial gets defeated in two ways viz.(1) when the Special Court presided over by sessions judge for one district or for more than one district is functioning from a place distant from the place of the accused the Special Court is inaccessible to the litigant public and (2) the investigating police officers have not been filing the charge-sheets in almost all the cases which is a condition precedent for commencement of trial. It is common knowledge that in every sessions division comprising of a district, Asst. Sessions Judge has been functioning in the country and u/s. 28 of Cr. P.C. an Asst session's judge is empowered to pass any sentence of imprisonment for a term not exceeding 10 years. If Parliament amends the Law empowering the Asst. Sessions Judges including the Add. Asst. Sessions Judges to try the offences "by warrant procedure" under the E.C. Act they can impose the maximum sentence of 7 years prescribed under the E.C. Act and at the same time ensure speedy trial of the cases with minimum inconvenience either to the accused or to the witnesses or to the prosecution. However in the metropolitan areas since there are no Courts of Asst. Sessions judges, Parliament may provide that in every metropolitan area, the offences under the E.C. Act shall be tried by the chief Metropolitan Magistrate appointed by the High Court, "by warrant procedure". The Essential Commodities (Special Provisions) Act, 1981 has no teeth to bite and the maximum sentence of 2 years imposed by the Special Court does not have a deterrent effect on the white collar criminals inasmuch as whenever the accused is convicted and sentenced for a period not exceeding 3 years u/s. **389(3) Cr. P.C.** he is entitled to be released on bail if he intends to appeal to the High Court. In effect the conviction and sentence by the Special Court is a mockery since the sentence is only on paper which is not executed pending the decision in an appeal preferred by the accused to the High Court, unlike other cases where the sentence is for a period exceeding three years.

The Act of 1981 on the one hand restricted the maximum sentence Of imprisonment to two years only and on the other prescribed a minimum sentence of 3 months, and in the case of habitual offenders for a minimum period of 6 months without giving the Special Court any discretion to pass a sentence of less than 3 months or 6 months even in deserving cases. In the Parent Act there were provisions empowering the Court to pass a sentence of less than 3 months or less than 6 months as the case may be for reasons to be recorded in writing.

The amended Act of 1981 has taken away that power of the Court. Now if a person is found guilty u/s. 7(1) (a)

(ii) or 7(2) the Judge has to pass the minimum sentence of imprisonment of 3 months and if the offence is one u/s. 7(2) (a) of the Act the Judge has to pass a minimum sentence of 6 months. The court has no option or discretion in the matter even when the offender is a petty shopkeeper or hawker or a street vendor. This has made the Act draconian penalizing petty offenders who are very often merely victims of circumstances. It is therefore suggested that Parliament may restore the proviso to sub-c1. (ii) of S. 7(1) (a) and the provision of sub-c1. (2) (a) of S. 7 which were Omitted from the Parent Act by S,7 of the Essential Commodities (Special Provisions) Act. 1981 to mitigate injustice and hardship to petty traders.

PENAL PROVISIONS UNDER THE ACT

There had been on our Statute books the Essential Commodities Act of 1955 which was amended in 1981 for dealing more effectively with black marketers, hoarders and profiteers so as to take stem action/ measures against such anti-social elements and white collar criminals who indulge in playing havoc with the public by disrupting supply and distribution of essential commodities including food-stuffs for their wrongful gain. The act aims at, in order to minimize, if not to eradicate, these most heinous crimes against the society. But, paradoxically enough, the relevant provisions of the maximum sentence of imprisonment has been reduced from seven year to only two years.⁷

STATUTORY OFFENCES AND PENALTIES:

Briefly put following are the enactments with their relevant provisions which deal with various offences like, Some of the statutes dealing with profiteering Back-Marketing & Hoarding etc. are:

1. The Essential commodities Act 1955- Sec.3 (1);
2. The Industries (Development & Regulation) Act 1961- Sec. 24.
3. The Tea Act,1953 — Sec. 41
4. The Cotton cloths Act, 1981- Sec. 8, S. 10 (2);
5. The Coffee Act, 1942- sec. 36 (1) & 3A;
6. The Preventive Detention Act, 1950, Sec. 3(i) (a), (iii)

7. The Rubber Act, 1947- Sec. 5
8. The Drugs (Control) Act, 1950 — Sec.13 (1), 13 (2)
9. The Sugarcane Act, 1934 — Sec. 5
10. The Defence of India Act, 1962 — Sec.3 (2). (37)

- Violation of foreign Exchange regulations and import Laws are frequently resorted to for the take of huge profits.
- Unscrupulous trades take advantage of these in prices of essential commodities. Shortage of availability of particular market commodities in the market, they create an artificial scarcity in order to indulge in so called business of profiteering, back-marketing and hoarding etc.

Penalties:

(1) If any person contravenes any order made under section 3:-

(a) He shall be punishable:-

(j) In the case of an order made with reference to clause (h) or clause (i) of sub-section (2) of that section, with imprisonment for a term which may extend to one year and shall also be liable to fine, and

(ii) in the case of any other order, with imprisonment for a term which shall not be less than three months but which may extend to seven years and shall also be liable to fine;

Any property in respect of which the order has been contravened shall be forfeited to the Government.

(b) any packing, covering or receptacle in which the property is found and any animal, vehicle or other conveyance used in carrying the property shall, if the court so orders, be forfeited to the Government.

⁶Information available at, Chronicle IAS 100, “Government Planning to amend the Essential Commodities Act” (<http://www.Chronicleias.com/ias-all-india-test-series.php>)

For details on penal provisions under the Act, see, Pradyot kumar sengupta, “A few thoughts on the Essential Commodities (special provision) Act,1981(No.18 of 1981)”, Criminal law Journal,1984,pg no.41-46

For details, see, K.D Gaur, “White Collar crime and Its Impact on Society”, criminal Law & criminology, 2002 New Delhi.

- (1) If any person to whom a direction is given under clause (b) of sub-section (4) of section 3 fails to comply with the direction, he shall be punishable with imprisonment for a term which shall not be less than three months but which may extend to seven years and shall also be liable to fine:
- (2) (2A) If any person convicted of an offence under sub-clause (ii) of clause (a) of sub-section (1) or under sub-section (2) is again convicted of an offence under the same provision, he shall be punishable with imprisonment for the second and for every subsequent offence for a term which shall not be less than six months but which may extend to seven years and shall be liable to fine:
- (3) Where a person having been convicted of an offence under sub-section (1) is again convicted of an offence under that sub-section for contravention of an order in respect of an essential commodity, the Court by which such person is convicted shall, in addition to any penalty which may be imposed on him under that sub-section by order, direct that, that person shall not carry on any business in that essential commodity for such period, not being less than six month, as may be specified by the Court in the order.⁹

Power of Central Government to recover certain amounts as arrears of land revenue:-

- (1) Where any person, liable to -
 - (a) pay and amount in pursuance of any order made under section 3 or,
 - (b) deposit any amount to the credit of any Account of Fund constituted by or in pursuance of any order made under that section, makes any default in paying or depositing the whole or any part of such amount, the amount in respect of which such default has been made whether such order was made before or after the commencement of the Essential Commodities (Amendment) Act, 1984, and whether the liability of such person to pay or deposit such amount arose before or after such commencement be recoverable by Government together with simple interest due thereon computed at the rate of fifteen per cent per annum from the date of such default to the date of recovery of such amount, as an arrear of land revenue or as a Public Demand.

- (2) The amount recovered under sub-section (1) shall be dealt with in accordance with the order which the liability to pay or deposit such amount arose.
- (3) Notwithstanding anything contained in any other law for the time being in force or any contract to the contrary, no court, tribunal or other authority shall grant any injunction or make any order prohibiting or restraining any Government from recovering any amount as an arrears of land revenue or as a Public Demand in pursuance of the provisions of sub-section (1).
- (4) If any order, in pursuance of which any amount has been recovered by Government as an arrear of land revenue or as a Public Demand under sub-section (1) is declared by a competent court, after giving to the Government a reasonable opportunity of being heard, to be invalid, the Government shall refund the amount so recovered by it to the person from whom it was recovered, together with simple interest due thereon, computed at the rate of fifteen percent per annum, from the date of recovery of such amount to the date on which such refund is made.

Explanation- For purposes of this section, "Government" means the Government by which the concerned order under section 3 was made or where such order was made by an officer or authority subordinate to any Government, that Government" ⁰

Offences by Companies.

(1) If the person contravening an order made under section 3 is a company, every person who, at the time the contravention was committed was in charge of and was responsible to the company for the conduct of the business of the company as well as company shall be deemed to be guilty of the contravention and shall be liable to be proceeded against and punished accordingly.

Provided that nothing contained in this sub-section shall render any such person took place without his knowledge or that he exercised all due diligence to prevent such contravention.

(5) Notwithstanding anything contained in sub-section (1), where an offence under this Act has been committed with the consent or connivance of, or is attributable to any neglect on the part of any director, manager, secretary or other officer of the company such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation — For the purpose of this section. (a) “Company” means anybody corporate, and includes a firm or other association of individuals; and (b) “director” in relation to a firm means a partner in the firm.’³

Offences to be cognizable (2 of 1974) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, every offence punishable under this Act shall be cognizable and non bailable.’⁴

Power of court to publish name, place of business, etc., of companies convicted under the Act. (1) Where any company is convicted under this Act, it shall be competent for the court convicting the company to cause the name and place of business of the company, nature of the contravention, the fact that the company has been so convicted and such other particulars as the court may consider to be appropriate in the circumstances of the case to be published at the expense of the company in such newspapers or in such other manner as the court may direct.

(2) No publication under sub-section (1) shall be made until the period for preferring an appeal against the orders of the court has expired without any appeal having been preferred or such an appeal having been preferred has been disposed of:

(3) The expenses of any publication under sub-section (1) shall be recoverable from the company as if it were a fine imposed by the court.

Explanation — For the purpose of this section, “Company” has the meaning assigned to it in clause (a) of the Explanation to section 10.’⁵

Presumption of culpable mental state:-

(1) In any prosecution for any offence under this Act which required a culpable mental state on the part of the accused, the court shall presume the existence of such mental state but it shall be a defense for the accused to prove the fact that he had no such mental state with respect to the act charged as an offence in that prosecution.

Explanation — In this section, “Culpable mental state” includes intention, motive, knowledge of a fact and the belief in or reason to believe a fact.

³ Section 10 of Essential Commodities Act.

⁴ Section 10A of Essential Commodities Act.

⁵ Section 7 of Essential Commodities Act

(2) For the purposes of this section a fact is said to be proved only when the court believes it to exist beyond reasonable doubt and not merely when its existence is established by a preponderance of probability.¹⁶

Cognizance of offences: No court shall take cognizance of any offence punishable under this Act except on a report in writing of the facts constituting such offence made by a person who is a public servant as defined in section 21 of the Indian Penal Code, or any person aggrieved or any recognized consumer association whether such person is a member of that association or not.(45 to 1860)

Explanation - For the purpose of this section and section 12AA “recognized consumer association” means voluntary consumer association registered under the Companies Act, 1956 or any other law for the time being in force, (1 of 1956).¹⁷

Constitution of special courts:

(1) The State Government may, for the purpose of providing speedy trial of the offences under this Act, by notification in the Official Gazette, constitute as many Special Courts as may be necessary for such area or areas as may be specified in the notification.

(2) A Special Court shall consist of a single judge who shall be appointed by the High Court upon a request made by the State Government.

Explanation — In this sub-section, the word “appoint” shall have the meaning given to it in the Explanation to section 9 of the code.

(3) A person shall not be qualified for appointment as a judge of a Special Court unless -

(a) He is qualified for appointment as a judge of a High Court, or

(b) He has, for a period of not less than one year, been a Sessions judge or an Additional Sessions Judge.”

Offences triable by Special Court

¹⁶ Section 10B of Essential Commodities Act. ¹⁶ Section 10C of Essential Commodities Act.

¹⁷ Section 11 of Essential Commodities Act

¹ Section 12A of Essential Commodities Act 1955.

(1) Notwithstanding anything contained in the code.

(a) all offences under this Act shall be totaled only by the Special Court constituted for the area in the offence has been committed or where there are more Special Courts than one for such area, by such one of them as may be specified in this behalf by the High Court;

(b) where a person accused of or suspected of the commission of an offence under this Act is forwarded to a Magistrate under sub-section (2) or sub-section (2A) of section 167 of the Code, such Magistrate may authorize the detention of such person in such custody as he thinks fit for a period not exceeding fifteen days in the whole where such Magistrate is a Judicial Magistrate and seven days in the whole where such Magistrate is an Executive Magistrate:

Provided that where such Magistrate consider —

(i) when such person is forwarded to him as aforesaid or

(ii) upon or at any time before the expiry of the period of detention authorized by him; that the detention of such person is unnecessary, he may, if he is satisfied that the case falls under the proviso to section 8, order the release of such person on bail and if he is not so satisfied, he shall order such person to be forwarded to the Special Court having jurisdiction;

(c) the Special Court may, subject to the provisions of clause

(d) of this sub-section, exercise in relation to the person forwarded to it under clause (b), the same power which a Magistrate having jurisdiction to try a case may exercise under section 167 of the Code in relation to an accused person in such case who has been forwarded to him under that section;

(d) Save as aforesaid no person accused of or suspected of the commission of an offence under this Act shall be released on bail by any court other than a Special Court or the High Court; Provided that a Special Court shall not release any such person on bail—

(i) Without giving the prosecution an opportunity to oppose the application for such release unless the Special Court, for reasons to be recorded in writing, is of opinion that it is not practicable to give such opportunity; and

(ii) where the prosecution opposes the application, if the Special Court is satisfied that there appear reasonable grounds for believing that he has been guilty of the offence concerned;

Provided further that the Special Court may direct that any such person may be released on bail if he under the age of sixteen years or is a woman or is a sick or infirm person, or if the Special Court is satisfied that it is just and proper so to do for any other special reason to be recorded in writing;

(e) a Special Court may, upon a perusal of police report of the facts constituting an offence under this Act or upon a complaint made by an officer of the Central Government or a State Government authorized in this behalf by the Government concerned or any person aggrieved or any recognized consumer association whether such person is a member of that association or not take cognizance of that offence without the accused being committed to it for trial;

(f) all offences under this Act shall be tried in a summary way and the provisions of sections 262 to 265 (both inclusive) of the Code shall as far as may be, apply to such trial; Provided that in the case of any conviction in a summary trial under this section, it shall be lawful for the Special Court to pass a sentence of imprisonment for a term not exceeding two years.

(2) When trying an offence under this Act, a Special Court may also try an offence other than an offence under this Act, with which the accused may, under the Code, be charged at the same trial; Provided that such other offence is under any other law for the time being in force trialed in a summary way: Provided further that in the case of any conviction for such other offence in such trial, it shall not be lawful for the Special Court to pass a sentence of imprisonment for a term exceeding the term provided for conviction in a summary trial under such other law.

(3) A Special Court may, with a view to obtaining the evidence of any person suspected to have been directly or indirectly concerned in or privy to an offence under this Act, tender a pardon to such person on condition of his making a full and true disclosure of the whole circumstances within his knowledge relating to the offence and to every other person concerned whether as principal or abettor in the commission thereof and any pardon so tendered shall for the purposes of section 308 of the Code, be deemed to have been tendered under section 307 thereof.

(4) Nothing contained in this section shall be deemed to affect the special powers of the High Court regarding bail under section 439 of the Code and the High Court may exercise such powers including the power under clause (b) of sub-section (1) of that section as if the reference to “Magistrate” in that section included also a reference to a “Special Court” constituted under section 12A.⁹

Appeal and Revision

The High Court may exercise so far as may be applicable all the powers conferred by Chapters XXIX and XXX of the Code on a High Court, as if a Special Court within the local limits of the jurisdiction of the High Court were a Court of Sessions trying cases within the local limits of the jurisdiction of the High Court.²⁰

Application of Code to proceedings before a Special Court

Save as otherwise provided in this Act, the provisions of the Code (including the provisions as to bail and bonds) shall apply to the proceedings before a Special Court and for the purposes of the said provisions, the Special Court shall be deemed to be a Court of Sessions and the person conducting a prosecution before a Special Court, shall be deemed to be a Public Prosecutor.²¹

Grant of injunction, etc. by civil courts: No civil court shall grant an injunction or make any order for any other relief against the Central Government or any State Government or Public officer in respect of any act done or purporting to be done by such Government, or such officer in his official capacity under this Act or any order made there under, until after notice of the application for such injunction or other relief has been given to such Government or officer.²²

Presumption as to orders: Where an order purports to have been made and signed by an authority in exercise of any power conferred by or under this Act, a court shall presume that such order was so made by that authority within the meaning of the Indian Evidence Act, 1872. (1 of 1872).²³

⁹ Section 12AA of Essential Commodities Act 1955.

²⁰ Section 12AB of Essential Commodities Act 1955.

⁰¹ Section 12AC of Essential Commodities Act 1955.

²² Section 12B of Essential Commodities Act 1955.

⁰³ Section 13 of Essential Commodities Act 1955.

Burden of proof in certain cases : Where a person is prosecuted for contravening any order made under section 3 which prohibits him from doing any act or being in possession of a thing without lawful authority or without a permit, license or other document, the burden of proving that he has such authority, permit, license or other document shall be on him.²⁴

Protection of action taken under Act : (1) No suit, prosecution or other legal proceeding shall lie against any person for anything which is in good faith done or intended to be done in pursuance of any order made under section 3.²⁵

Prosecution of public servants

Where any person who is a public servant is accused of any offence alleged to have been committed by him while acting or purporting to act in the discharge of his duty in pursuance of an order made under section 3, no court shall take cognizance of such offence except with the previous sanction -

(a) of the Central Government, in the case of a person who is employed or, as the case may be, was at the time of commission of the alleged offence employed, in connection with the affairs of the Union;

(b) of the State Government in the case of a person who is employed or as the case may be was at the time of commission of the alleged offence employed, in connection with the affairs of the State.²⁶

²⁴ Section 14 of Essential Commodities Act 1955.

²⁵ Section 15 of Essential Commodities Act 1955.

²⁶ Section 15A of Essential Commodities Act 1955.

CHAPTER-IV

CRIME RELATING TO TAX EVASION

Tax evasion is the general term for efforts by individuals, corporations, trusts and other entities to evade taxes by illegal means. Tax evasion usually entails taxpayers deliberately misrepresenting or concealing the true state of their affairs to the tax authorities to reduce their tax liability and includes in particular dishonest tax reporting, such as declaring less income, profits or gains than actually earned or overstating deductions thereof.

Tax evasion is regarded as an activity commonly associated with the informal economy. One measure of the extent of tax evasion is said to be the amount of unreported income, namely the difference between the amount of income that should legally be reported to the tax authorities and the actual amount reported, which is also sometimes referred to as the tax gap.

Tax avoidance, on the other hand, is the legal utilization of the tax regime to one's own advantage to reduce the amount of tax that is payable by means that are within the law. Both tax evasion and avoidance can be viewed as forms of tax noncompliance, as they describe a range of activities that are unfavorable to a state's tax system.¹

So, Tax evasion is not paying the taxes due on the income earned or generated. This in turn leads to the generation of 'black money'. Thus when we talk of tax evasion we are actually also thinking about 'black money', the first is the method and the second the end product.²

Indian tax laws, though providing for specific anti avoidance measures, do not have any general anti avoidance rules or regulations. The Courts have over the years drawn out the general parameters and principles in outlining whether a transaction or scheme would be considered as tax avoidance/tax evasion or tax planning under the tax laws, as outlined below, though the uncertainty continues.

Information available at http://www.en.wikipedia.org/wiki/Tax_evasion

² See, Mahesh C. Bijawat, "Economic Crimes (Tax Evasion) By People in Film Industry: Its impact on national economy" The Indian Journal of Legal Studies, 1991, vol. XI, pg. no. 121.

VIOLATION OF TAX LAWS

The law does not require taxpayers to arrange their finances in order to maximize their taxes. All taxpayers are entitled to take all lawful steps that apply to their individual situations in order to minimize their tax liabilities. For example, it is lawful to take tax deductions that are available, and a taxpayer may avoid taxes on a certain amount of income by making charitable contributions.

Contrasted with legal efforts to minimize tax liabilities, TAX EVASION is a crime. . Some of the most common forms of tax evasion include the following:

- Failing to report the cash income
- Taking unauthorized deductions for personal expenses on a business's TAX RETURN
- Falsely claiming charitable deductions inflating the amount of charitable deductions when there have in fact been none or there have been significantly less than claimed
- Filing a false tax return, improperly omitting property and knowingly and significantly underreporting the value of an estate. Some of the more important and frequent tax violations, which occur in India, are in the areas of income tax, wealth tax, estate tax and sales tax. The loss resulting from the violations to the state exchequer is tremendous. Apart from the financial implications of the problem, there are other dimensions of the evil such as the corrupting influence of the tainted money on governmental machinery and the consequential contempt, disrespect and cynicism towards law of general.⁹⁰

⁹⁰ See, *ibid*

FORMS OF TAX EVASION

Some of the common forms of tax evasion devices that are used may be enumerated as follows:"

1. Omitting to report taxable income of the assessee to the assessing officer.
2. Fraudulently changing, manipulating and altering books of account or making alterations therein.
3. Maintaining multiple sets of account books.
4. Opening account under assumed names, or opening accounts in the names of those who have not to sign their checks or to do anything. with it.
- s. Securing contracts in the name of dummy heads.
6. Keeping transactions out of account books.
7. Failure to file return in time to escape from taxes altogether or to make assessment inadequate.
8. Filing of incomplete, fraudulent or inaccurate return.
9. Keeping incomplete accounts.
10. Claiming erroneous deductions.
11. Filing inappropriate appeals against assessments supported by false accounts.
12. Inflating expenses either by spending unnecessarily or falsely showing expenses as incurred.
13. Maintaining substandard accounts and thereby concealing income.
14. Suppressing documents of sale and other transactions.
15. In property deals giving 25-30% in white and rest in black.

"For details see, Rajesh Gupta & Gunjan Gupta, "Tax Evasion and Avoidance-Concept and Precept", Delhi Law Times, 1995, vol. LVII, pg.no.3-4.

16. Purchasing restaurant bills for cash at 90-95% of discount.
17. The Endowment of a scholarship on a condition that the individual's child is awarded that scholarship and that the school recoups the tax on the annual payment contracted for under the Covenant."

How to avoid Taxes?

Taxes can be avoided in the following three broad ways:¹² Income

1. splitting
2. Income spreading
3. Income transformation

These broad ways can further be divided into following devices which are used for purposes of tax avoidance:

1. The purchase of a defunct company, which has made a heavy loss, so as to use up that loss against future profit.
2. Accumulating income by means of trust so as to avoid sur-tax.
3. Arranging for the tax avoider's income to come to him as Capital.
4. Arranging for the tax avoider's income to come to him as capital.
5. Arrangements between a friendly employer and employees, which suit them both to the disadvantage of revenue.
6. Transferring income from a high surtax payer to someone pays little or no surtax. However, this device is not prevalent in India.
7. Arranging expenditure in such a way as to qualify for deduction for tax purposes from his business, e.g., by allowances to relations, paying charitable subscriptions and other domestic expenditures.
8. Income splitting by means of intra-family arrangements, trusts and controlled corporations.

¹² See, *ibid*

9. Transferring the income to a corporation or trust situated in a jurisdiction which levies tax at a nominal rate, or even no tax.
10. Showing income as Agricultural Income to get exemption.
11. Spreading income over a number of years, thereby reducing tax liability.
12. Capitalizing a tax-payer's income, deducting capital expenditure from income or converting income into untaxed capital gains.
13. Purchasing securities with a low dividend yield but a high of expected capital gain, owing to rising dividend payment over time.
14. Purchasing government bonds which provide discount and interest tax fee.

Examples of Tax Evasion

- **Evasion of customs duty**

Customs duties are an important source of revenue in the developing countries. The importers purport to evade customs duty by (a) under-invoicing and (b) misdeclaration of quantity and product-description. When there is ad valorem import duty, the tax base is reduced through underinvoicing. Misdeclaration of quantity is more relevant for products with specific duty.

- **Smuggling**

Smuggling is importation or exportation of foreign products by unauthorized means. Smuggling is resorted to for total evasion of customs duties, as well as for the importation of contraband items. A smuggler does not have to pay any customs duty since the products are not routed through an authorized customs port, and therefore are not subjected to declaration and payment of duties and taxes.

⁹⁰ Information available at http://www.en.wikipedia.org/wiki/Tax_evasion

- **Evasion of value added tax (VAT) and sales taxes**

During the later half of the twentieth century, value added tax (VAT) has emerged as a modern form of consumption tax through the world, with the notable exception of the United States. Producers who collect VAT from the consumers may evade tax by under-reporting the amount of sales. The US has no broad-based consumption tax at the federal level, and no state currently collects VAT; the overwhelming majority of states instead collect sales taxes. Canada uses both a VAT at the federal level (the Goods and Services Tax) and sales taxes at the provincial level; some provinces have a single tax combining both forms.

In addition, most jurisdictions which levy a VAT or sales tax also legally require their residents to report and pay the tax on items purchased in another jurisdiction. This means that those consumers who purchase something in a lower-taxed or untaxed jurisdiction with the intention of avoiding VAT or sales tax in their home jurisdiction are in fact breaking the law in most c

CAUSES OF TAX EVASION / AVOIDANCE

Some Causes of Evasion and Avoidance:

1. **Habit:** : initially, the evasion and avoidance was taken as due to the general deterioration in moral standards of the people, lack of tax consciencesness and absence of social stigma tax evasion but nowadays people avoid taxes without any reason but one, that they are 'habitual tax evaders'. Therefore, even it moderate rate of taxation is adopted then also it will not bring tax evasion down, after all it has become rather a habit of assessee.
2. **High rates of Taxation:** The chambers and other bodies representing trade and industry have been unanimous in their view that rates of taxation, which have reached expropriatory levels—the marginal rate for income-tax alone reaching 97.75 percent—breed tax evasion and generate black money. When the marginal rate taxation is as high as 97.75 percent, the net profit on concealment can be as much as 4,3000 percent of the after, tax income. The implication of 97.50 per cent Income Tax is that h is more profitable at a certain level of income to avoid tax on Rs. 30 than to earn honestly Rs. 1,000/-.

The tax system and its burden must be acceptable to the citizens i.e., the potential tax-payers...Given our past experience and the present totality of the circumstances affecting tax-system and its operation, it is better to have moderate rates with broader bases".

3. **Donations to Political Parties** : Large funds are required to meet election expenses and it is common knowledge that these are financed to a great extent by wealthy persons with lots of black money. To some, it is the cause for the generation of black money, as black money is generated for this purpose and other says it to be only an outlet of black money.
4. **Economy of Shortage and Consequent controls and Licences** : Partition of India brought about scarcity conditions and untold sufferings of the masses and that in turn shown these of black money. 'Parallel Economy' emerged, to combat the Govt. adopted the formula of controls and licences that in turn further increased the propensity to evade taxes. Towards reducing this propensity of evasion because of controls and licences, Man Mohan Singh has adopted the path economic liberalization, where privatization is Advocate for. Reducing excise duties together with abolishing zero tax rates, reduction in customs duties are not the only measures of liberalization. Delicensing. and dilution of controls also the convertibility of LERMS and Export incentives together with import liberalization should not be taken out of sight.
5. **Ineffective Enforcement of Tax Laws**: It is pointed out that the Income-tax administration has not been able to achieve a major break through in fighting evasion for certain technical and administrative reasons. Tax compliance is low and tax evasion is widespread partly because of high tax rates, partly because of venality of money tax-payers and partly because of inefficient tax administration with corrupt elements. To meet the requirements, Raja Chelliah has recommended.¹⁴

¹⁴See, Rajesh Gupta & Gunjan Gupta, " **Tax Evasion and Avoidance-Concept and Percept**", Delhi Law Times, 1995, vol. LVII.

Thus, Any attempt to avoid or evade tax may be caused by any one or combination of the following factors: -¹⁵

- i. High marginal tax rates and frequent changes in tax rates such as sales tax and import duty, withholding tax etc. because taxpayers may consider distribution of their incomes unfair and may attempt to make a unilateral adjustment for equity by non-compliance through tax evasion.
- ii. Administrative inefficiency, collusion with taxpayers and bribery of tax officials. Financial constraints, inadequate working tools and lack of staff motivation do not encourage tax compliance. Income may go untaxed and tax collection is delayed for various reasons.
- iii. Inadequate training and experience of tax administrators coupled with lack of exposure to business practices may limit tax officials' ability to expose complex international and intercompany tax avoidance schemes and check on stock manipulations or proper accounting in long term contracts.
- iv. Too many taxes (multiplicity of taxes) are difficult to comply with correctly due to lack of knowledge of the detailed provisions of all the tax laws, too many due dates and too much return to complete, accounting staff shortages and different complexities in the laws etc. There are more than 30 tax laws in Tanzania. There is a need to rationalize the tax regime further.
- v. Low prospect of detection and punishment of tax evaders. The more tax evaders a person know who are not caught and punished, the more likely he will also join the band wagon of tax evaders (induced evasion). Where tax evaders are caught the penalty should be sufficiently deterrent. That is why a selective prosecution policy is necessary. However w.e.f.1/7/1997 the penalties for non-compliance appear too harsh and arbitrarily enforced.
- vi. Deficiencies in the legal structure of the tax laws (poor draftsmanship) and complexity allow tax avoidance.
- vii. Traditional and cultural tendency to hate and evade taxes (low tax morality): In Tanzania tax evasion seems to generate some sense of cheap heroism to the evaders. The practice is generally not seen by the society as a stigma.

¹⁵ Information available at <http://www.taxation-tz.com/2011/05/tax-evasion.html>, (Kessy Juma, 'tax avoidance and Evasion' Tuesday, May 10,2011

CONSEQUENTIAL EFFECTS OF TAX AND AVOIDANCE

The avoidance of taxes is the only intellectual pursuit that carries any reward.” Tax avoidance is legally permissible hence, it does not matter how it would effect because anything which law permits is in some or the way connected with the fulfillment of some legitimate purpose or aim, so the by-products of such a purpose is not so relevant. However, tax evasion can be proved to be really dangerous. Efforts should be even made to prevent the abuse or misuse of the legal provisions. In the case of McDowell and co. ltd v. CTO, evil consequences of tax avoidance are summarized as follows:

- 1) Substantial loss of much needed public revenue;
- 2) Serious disturbances caused to the economy;
- 3) Sense of injustice and inequality;
- 4) Ethics of transferring the burden of tax liability to the shoulders of the guideless good citizens from those of artful dodgers.

Although the concepts of tax avoidance and tax evasion are different, the purpose and net effect of these concepts are exactly the same i.e. the reduction or elimination of tax liability resulting into:

- Government revenue loss leading to non-realization of budget plans and objectives for economic and social development;
- Non-realization of other non-revenue goals of taxation e.g. inequality in taxation, as some law abiding citizens or those with no opportunity to evade tax such as employees, bear a disproportional heavier tax burden than others;
- Alternative sources of government revenue such as the running of government budget deficits is inflationary and foreign loans/grants dependency causes heavy foreign debt burden (loan repayment with interest drains foreign reserves) and may be politically undesirable.⁷

⁷(<http://blogs.telegraph.co.uk/finance/ianmeowie/100003388/tax-avoidance-orterrorism-which-is-the-biggest-threat/2010>).

RECENT CASE OF TAX EVASION IN INDIA

India: Vodafone tax ruling - A legal analysis of the triumph

Facts of Vodafone's case are briefly as under.

Hutchison Essar is an Indian Company, the controlling interest of Hutchison Essar is held by a SPV of Cayman Island (CGP Investments Holding Ltd.). CGP is owned by Hutchison Telecommunications International Ltd (HTIL), Hongkong. In this manner the controlling interest of Hutchison Essar is held by HTIL, Hongkong through an intermediary Cayman Island company (CGP). Vodafone International Holdings, Netherland entered into an agreement with HTIL, Hongkong to buy the shares of CGP (Cayman Island). Since CGP is holding directly and indirectly 67% shares of Hutchison Essar (India), the above transaction results in transfer of shares and controlling interest of Hutchison Essar(India) from HTIL, Hongkong to Vodafone International Holding, Netherland. The consideration for transfer is stated to be USD 11.1 Billion.

The Income-tax Department issued a notice to Vodafone to show cause as to why it should not be treated as assessee in default for not withholding the Indian Capital Gain Tax on the payment made by it to HTIL for the transaction of sale of share of CGP (which in turn holds controlling interest of HTIL). Vodafone challenged the show cause notice by way of writ. The Hon'ble Bombay High Court dismissed the writ.

The High Court held that "the very purpose of entering into agreements between the two foreigners is to acquire the controlling interest which one foreign company held in the Indian Company, by other foreign company. This being the dominant purpose of the transaction, the transaction would certainly be subject to municipal law of India, including the Indian Income-tax Act". The Indian Law does not permit use of any "Go1ourable" device by any tax payer for perpetuating tax evasion in India. The High Court remarked that "the present is a case of tax evasion and not tax avoidance".

Thereafter Vodafone approached the Supreme Court for stay of Mumbai High Court's decision. The Supreme Court on 27/09/2010 ordered that Vodafone has to deposit a part of the amount in dispute before its case is heard by the Court. Finally the Supreme Court gave its verdict on 20.01.2012 and has deGided the issue in favour of Vodafone. The Hon'ble Apex Court has held as under:

"Applying the look at test in order to ascertain the true nature and character of the transaction, we hold, that the Offshore Transaction herein is a bonafide structured FDI investment into India which fell outside India's territorial tax jurisdiction, hence not taxable. The said Offshore Transaction evidences participative investment and not a sham or tax avoidant preordained transaction. The said Offshore Transaction was between HTIL (a Cayman Islands company) and VIH (a company incorporated in Netherlands). The subject matter of the Transaction was the transfer of the CGP (a company incorporated in Cayman Islands). Consequently, the Indian Tax Authority had no territorial tax jurisdiction to tax the said Offshore Transaction."

A careful legal analysis of the aforesaid judgment will show that the following important issues were considered by the Hon'ble Apex Court in deciding the case in favour of Vodafone.

Whether the situs of shares of a foreign company holding controlling interest in Indian company can be said to be in India?

In the instant case of Vodafone, the Cayman Island company, CGP, was owning controlling interest in the Indian HEL. Therefore, it was revenue's contention that the situs of shares of CGP shall be deemed to be in India and accordingly the transaction of sale of CGP shares will be liable for tax in India. In this regard, the Hon'ble Supreme Court at para 82 and para 127 has held that situs of shares situates at the place where the company is incorporated and / or the place where the shares can be dealt with by way of transfers. In the instant case, the transfer took place in respect of shares of CGP. CGP is a company incorporated in Cayman Island and the transfer also took place outside India. Therefore, the situs of shares of CGP is not in India.

What principles should be applied to treat a transaction as sham and bogus?

The Hon'ble Apex Court has dealt with this issue in detail and has held that every foreign direct investment coming to India, as an investment destination, should be seen in a holistic manner.

In this regard, the following factors should be kept in mind on the facts of the instant case:

- the concept of participation in investment
- the duration of time during which the Holding Structure exists
- the period of business operations in India
- the generation of taxable revenues in India
- the timing of the exit
- the continuity of business on such exit.

The Hon'ble Court examined the above facts. After a detailed analysis, the Hon'ble Court found that the aforesaid factors are in favour of Vodafone and therefore, held the entire transaction as not a sham and bogus transaction.

"Whether even an indirect transfer of property located in India will be covered under section 9(1)(i) of the Income-tax Act so as to render the same as liable for tax?"

In the instant case, CGP held shares of an India company. It was the contention of the Revenue that the transfer of shares of CGP outside India resulted into indirect transfer of shares of Indian company. Therefore, the transfer is liable for tax in India.

The Hon'ble Apex Court has dealt with this issue at para 71 and 165 of the order. It has been held that Section 9 covers only income arising from a transfer of a capital asset situated in India; it does not purport to cover income arising from the indirect transfer of capital asset in India. If the word indirect is read into Section 9(1)(i), it would render the express statutory requirement of the 4th sub-clause in Section 9(1)(i) nugatory. Therefore, Vodafone's transaction cannot be covered under section 9(1)(i) of the Income-tax Act.

Whether section 195 which casts obligation to deduct tax at source is applicable to non-residents also?

The Hon'ble Apex Court has dealt with this issue at para 178 to 187 of its order. It has been held that section 195 would apply only for payments made from a resident to a non-resident, and not between two non-residents situated outside India.

In the instant case, the Hon'ble Court observed that the transaction was between two non-resident entities through a contract executed outside India. Consideration also passed outside India. The transaction has no nexus with the

underlying assets in India. In order to establish a nexus, the legal nature of the transaction has to be examined and not the indirect transfer of rights and entitlements in India.

Therefore, the provisions of section 195 relating to deduction of tax at source will not apply.

Whether the Mcdowell case²⁰ in relation to permissible and impermissible tax planning is watered down by Azadi Bachao Andolan²¹ case?

The Hon'ble Apex Court held that the observations made in the case of Mcdowell are clearly in the context of artificial and colourable devices. In cases of treaty shopping and / or tax avoidance, there is no conflict between the Mcdowell and Azadi Bachao.

Further, it has been held that revenue's stand that the ratio laid down in Mcdowell is contrary to what has been laid down in Azadi Bachao Andolan is unsustainable and therefore, calls for no reconsideration by a larger bench.

Whether the Indian Tax Authorities have the territorial jurisdiction in respect of transaction entered into by two non-residents in respect of shares of a company incorporated outside India.

The Hon'ble Supreme Court in the instant case has observed that the entire transaction has been carried out outside India and in relation to property which is situated outside India.

It involves transaction between two non-residents in respect of shares of a company incorporated outside India. Therefore, the Indian Tax Authorities have no territorial tax jurisdiction over the said transaction.²²

²⁰ 154 ITR 148

²¹ 263 ITR 706

http://www.wbi.com/index.php?option=com_content&view...india , H.P.Aggaiwal, "India: Vodafone tax ruling- A legal analysis of the triumph,2011

CHAPTER - V

WHITE COLLAR CRIMES — EMERGING TRENDS IN INDIA

Discussed as above white collar crimes and the prevailing public feelings thereon do work on as an index of and towards social and legal change at the right earnest.

Modified Definition of Crime

From the foregoing discussion, it is evident that ‘White Collar Crimes’ and ‘social and economic crimes’ have spread in Indian society at an alarming rate in every exchequer and the public in general compared with the traditional and conventional crimes, they cause more injury to the public health and create a general apathy towards the a law and enforcement machinery of the State. At the same time persons involved in these crimes are neither treated as ordinary criminals nor punished adequately, instead they move about in society freely as respectable and good citizens. It may be because of some defect in the procedural as well as substantive law and the enforcement machinery, lack of social consciousness towards such type of crimes and class bias of the judicial tribunals, because such persons come from the well to do section of society. Its consequences are grave and far reaching. It has shattered the nations’ economy, retarded its development, adversely affected the nation’s health and happiness, demoralised people, and has created disrespect towards the law and the enforcement machinery. Hence, it is high time to modify our traditional and conventional concept of crime. The definition of ‘crime’ should no longer be limited to offences against the human body, property and state, generally committed by the persons of lower socio-economic class, but should be wide enough to include:

“all those anti-social and illegal acts which are committed by persons of middle and upper socio-economic class irrespective of whether the penalty is criminal civil or administrative.”

Codification of White Collar, Social and Economic Crimes

In order to remove the obscurity in the existing law relating to social and economic offences, which is found at a number of places in various statutes and to bring about uniformity in the law, procedure and their application, it is suggested to codify all these such offences on a scientific basis under the heading 'White collar and Socio-Economic Offences', without detriment either to the national interest or to the interest of the accused and the people in general, so that such criminals may be dealt with sternly. At present, there are approximately hundred Central Acts, besides a number of State enactments dealing with such anti-social offences. But there is hardly any uniformity in punishment, and procedure and the provisions are too complicated to understand. With this end in view, crimes may be classified in two parts, via, **First**, conventional and traditional crimes against the person, property and the state etc., which are punishable under the general criminal law of the land. **Secondly**, white collar crimes and social and economic crimes which are not usually punishable under the general criminal law of the land but under the regulatory legislations enacted by the legislature from time to time.

Nature of Punishment

The purpose of punishment besides being reformative is deterrent as well, so that it may deter the accused from repeating the crime in future and may be a warning to those who are like-minded. Accordingly, the law should not take a lenient attitude in fixing punishment to a white collar or a socio-economic criminal. The law would fail in its objective and duty, if it gives shelter or shows a soft attitude to such criminals. Only the other day at Varanasi, hundreds of persons died after drinking country made liquor which was contaminated with some poisonous material. The punishment for such an offence under the Indian Excise Act is nominal.

There is no dearth of such examples. It would be appropriate to quote the learned view of Dr, Radhakrishnan, the Second President of India, in this context. He said:

"The practitioners of this evil, the hoarders, the profiteers, the black-marketeers, and speculators are the worst enemies of our society. They have to be dealt with sternly, however, well placed, important and influential they may be; if we acquiesce in wrong-doing, people will lose faith in us."

Modification of the Doctrine of Mens Rea

The time has come when the century old common law doctrine of actus non facit reum nisi mens sit rea, (viz., there can be no crime without a guilty mind) should be excluded so as to preserve and protect social and economic interests of the community, which require strict adherence to such laws. The criminal liability for socio-economic offences should be made absolute. In other words, if a person has violated a provision of the law and caused injury, he should be held liable for that wrong the act was intentional or not.

Burden of Proof

The law of evidence should also be modified so as to shift the burden of proof of innocence in cases of with collar, social and economic crimes from the prosecution to that of the accused. The accused should be held liable for the violations of such laws, unless he proves his innocence.

Public Censure

A provision should be made of public censure by publishing the names of white collar and social and economic offenders in local as well as national newspapers, etc. This will have an added advantage over the sentence of imprisonment and fine.

The following are some of the Statutes dealing with White Collar and Social Economic Offences:

- i. The Customs Act, 1962 (52 of 1962).
- ii. The Atomic Energy Act, 1962 (33 of 1962).
- iii. The Coffee Act, 1942 (7 of 1942)
- iv. The Imports and Exports (Control) Act, 1947 (18 of 1947)
- v. The Essential Commodities Act, 1953 (10 of 1953)
- vi. The Indian Standards Institution (Certification Marks) Act, 1952 (35 of 1952).
- vii. The Tea Act, 1953.

- viii. The Corr Industry Act, 1953
- ix. The Foreign Exchange Regulation Act. 1947
- x. The Oil fields (Regulation and Development) Act, 1948 (53 of 1948)
- xi. The Reserve Bank of India Act, 1934
- xii. The Forward Contracts (Regulation) Act, 1952 (14 at 1952)
- xiii. The Mines and Minerals Act, 1956 (67 of 1956)
- xiv. The Securities Contracts etc. Act, 1965 (42 of 1965)
- xv. The Drugs and Magic Remedies (Objectionable advertisements) Act, 1954 (21 of 1954)
- xvi. The Prize Competitions .Act, 1955 (42 of 1955)
- xvii. The Dowry Prohibition Aet, 1961 (28 of 1961)¹

For details, see, Prabhat Chandra Tripathy, “The Menace of WCC and need for a new code.” Criminal Law Journal, 1997, Vol. I, January to March p.33-40

CONCLUSION

Our study of White Collar Crimes, having American overtones, envisages the existing scenario of rampant Socio-economic offences and wide spread corruption in Indian context. The emerging trends of such crimes are elusive indeed in as much as the law and its enforcing agencies over all tends to be failing to prove the governance and its legitimacy to the satisfaction of common people who suffer at large. International bodies including the World Bank have over these decades laid increasing emphasis on corruption as one of the primary forces retarding development in the developing world.

Thus, any report or complaint against such business or occupation/professional tactics often goes unheeded and unpunished to the advantage of culprits-the violators of law leading to corruption in the form of white collar crimes all around. But the people know very little about the trickery of these business mafia criminals and even when they know, they are apathetic towards the problem and as enormity because of the bitter fact that the legal battles involving such crimes are dragged on for years in the courts and tribunals.

DIFFERENCE BETWEEN BLUE COLLAR CRIMES & WHITE COLLAR CRIMES

- The term blue — collar crimes has come to mean those who work physically with hands and those who are Knowledge Workers are called White Collar Crimes.
- White Collar Crimes is relatively a new Species of crime whereas Blue Collar Crimes are traditional one.
- White Collar Crimes does not necessarily require mensrea whereas mensrea is an essential ingredient of a crime in Blue Collar Crimes.

White Collar Crimes is not associated with poverty or with the social & personal pathologies of individual criminal as in case of traditional & connectional crimes.

As a result the charges against the offenders/ criminals are forgotten long before they are actually settled. While, in fact, India has no dearth of laws but the challenging problem is there due to lack of enforcement. That is why and how I undertake this subject matter for my study/ research, so as to comprehend the multifaceted problems and related possible solutions and correctives which need immediate attention at different levels of our administrative and judicial system towards sustaining rule of law.

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