EMERGING DIMENSION OF WHITE COLLAR CRIME IN INDIA

A DISSERTATION TO BE SUBMITTED IN PARTIAL FULFILMENT OF THE REQUIREMENT FOR THE AWARD OF DEGREE OF MASTER OF LAWS

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List of Abbreviations

AC	--	Appellate Court
AIR	--	All India Reporter
AICTE	--	All India Council of Technical Education
CBI	--	Central Bureau Investigation
CrPC	--	Criminal Procedure Code
CVC	--	Central Vigilance Commission
FIF	--	Financial Institution Fraud
FIR	--	First Information Report
IPC	--	Indian Penal Code
IAS	--	Indian Administrative Service
IIMs	--	Indian Institutes of Management
NIBRS	--	National Incident Based Reporting System
Ph.D	--	Doctor of Philosophy
SCC	--	Supreme Court Cases
UCR	--	Uniform Crime Reports
USA	--	United States Of America
WCC	--	White Collar Crime
IPR	--	Intellectual Properties Rights
TNDPSA Act	--	The Narcotic Drugs and Psychotropic Substances
THOA	--	The Transplantation Of Human Organs Act

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16. *Shanti Lal v State AIR 1993 Cal 274*
17. *Sherras v De Rutzen*
18. *State of Gujarat v Mahesh Kumar Thakkar AIR 1980 SC 1167*

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INTRODUCTION

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INTRODUCTION

1.1 INTRODUCTION--

It is true that both crime and criminal are looked upon by way of hatred by all sections of the society but it is also true that the study and research of the law of crime has always been one of the most attractive branches of jurisprudence since the early years of human civilization within fact the law of crime has been as old as the civilization itself Wherever people organised themselves into groups or associations the need for some sort of rules to regulate the behaviour of the members of that group inter--se has been felt. and its infraction was inevitable There was no criminal law within uncivilized society and everymen was liable to be attacked within his person or properties at any time by any one The attacked either succumbed or over powered his opponent "A tooth for a tooth an eye for an eye a life for a life" was the forerunner of criminal justice at that time As the time advanced the injured person agreed to accept compensation instead of killing each other adversary Subsequently a sliding scale came into existence for satisfying ordinary crimes Crime has also increased by way of the advancement of the society Now by way of the advancement of science and technology newer form of criminalities has arisen known as white collar crime The notion of white collar crime was first introduced within the field of criminology by Prof Edwin H Sutherland within 1939 He defined white collar crimes as crime as a crime committed by persons of respectability and high social status within the course of their occupation.[1] The main categories of white collar crimes are bribery and corruption food and drug adulteration counterfeiting forgery tax evasion cyber--crimes etc.

White collar crimes are not a new phenomenon within our country The Indian Penal Code 1860[2] is the earliest comprehensive and codified criminal law of India It also deals by way of many white collar crimes and punishment is provided for bribery and corruption.[3] counterfeiting of coins and government stamps.[4] of offences relating to weights and measures.[5]offences relating to adulteration of food stuffs and drugs.[6] misappropriation of public property and criminal breach of trust[7] cheating[8] forgery and offences relating to

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[1] Edwin H. Southerland. *White Collar Crime* 14 (1949)
[2] Act No. 45 of 1860.
[3] Section 168. 169. 171B. 171C. 171E. 171H of Indian Penal Code. 1860.
[4] *Ibid* section 230 – 263.
[5] *Ibid* section 264 – 267.
[6] *Ibid* section 272 -- 276.
[7] *Ibid* section 403 – 409. [8]*Ibid* section 415 – 420 . [9]*Ibid* section 463 – 489. [10]*Ibid* section 489A – 489D.
[8] Strouds F. *The Judicial Dictionary* 172 (1890)

documents[9] and counterfeiting of currency[10] To understand the gravities of these white collar crimes under Indian Penal Code 1860 it is desirable to discuss these sections within detail.

1.1 CORRUPTION--

Prevalence of corruption is one of the problems which our country has been facing from time immemorial The word corruption is very comprehensive within its meaning It implies all the activities which are against the law and the society Its scope is very wide and it includes all the spheres of social life The corruption is not confined to any particular sphere It has entered and exists within every aspect of our modern society It is also not a one side act For every corruption there must be one corruptor According to Stroud's Judicial Dictionary[11] corruption means moral obliquities or moral perversity According to Oxford Advanced Learner's Dictionary[12] corruption means dishonest or illegal behavior especially of people within authority According to Black's Law Dictionary[13] corruption means a vicious and fraudulent intention to evade the prohibitions of the law The act of an official or fiduciary person who unlawfully and wrongfully uses his station or character to procure some benefit for himself or for another person contrary to duty and the rights of others Dr P Ramanatha Aiyar's definition seems to be very wide According to him corruption is something against law something forbidden by law it is an act or intent to gain advantage not consistent by way of official duty and the right of others Corruption can be defined as departure from what is pure or correct from the original.[14] The recent scandals like 2G Spectrum Tele Communication scam Commonwealth Games scam Adarsh Housing Societies Scam has rocked the nation The Santhanam Committee[15] report within its finding gave a vivid picture of white collar crimes committed by persons of respectabilities such as businessmen industrialists contractors suppliers and corrupt public officials.

[9] Arnold Fischer. *Oxford Advanced Learner's Dictionary* 234 (1985).
[10] Henry Campbell Black. *Black's Law Dictionary* 379 (1968).
[11] P.RamanathaAiyar. *The Law Lexicon.* 414 (2010)
[12] Government of India Report. *Santhanam Committee on Corruption* (1963)

Section 161 to 165--A of Indian Penal Code 1860 stands omitted by the Prevention of Corruption Act 1988.[13] Corruption by public servants under the Indian Penal Code 1860 is discussed as under--

1.1.1 PUBLIC SERVANT UNLAWFULLY ENGAGING within TRADE--

Faith is reposed within a public servant and if public servants are allowed to engage within trade they would not be able to devote their undivided attention to their official work Moreover they may take unfair advantage over other traders of their official position for the advancement of their trade So keeping this aspect within mind S.168 of the Code provides "whoever being a public servant. and being legally bound as such public servant not to engage within trade engages within trade shall be punished by way of simple imprisonment for a term which may extend to one year or by way of fine or by way of both.[14]

Trade within its wider sense covers every kind of trade business profession occupation calling or industry According to Oxford Dictionary[15] trade means the act or process of buying selling or exchanging commodities at either wholesale or retail by way of within a country or between countries The Supreme Court within *State of Gujarat* v *Mahesh Kumar Thakkar*[16] has held that trade within its narrow sense means "exchange of goods for goods or for money by way of object of making profit" and within its widest sense means "any business by way of a view to earn profit." The Court ruled that where a tracer within the office of Sub--Divisional Soil Conservation Office took earned leave and during that period of leave obtained training as an Electrical Signal Maintainer from the railway administration it was held that he cannot be convicted under section 168 of the Indian Penal Code 1860 as he has not engaged himself within any trade even though he was receiving stipend from the railways during the period of his training Similarly within *State of Maharastra* v *Chandrakant Solanki.*[17] the Supreme Court has held that engagement as agent of insurance company on commission basis does not amount to engaging within trade within the meaning of section 168 of the Code The 'commission' does not include profits because commission is an amount settled beforehand which goes to the person who brings business to the company whereas profits are whatever the company finally earns after deducting all expenditure and it goes to the company Thus where the accused was working as Inspector on probation within National Insurance Company engaged himself by running two insurance companies and

[13] Section 31 of the Prevention of Corruption Act. 1988.
[14] Section 168 of the Indian Penal Code. 1860.
[15] Arnold Fischer. *Oxford Advanced Learner's Dictionary* 245 (1985).
[16] AIR 1980 SC 1167. See also *Motilal. and Ors.* v. *The Government of Uttar Pradesh. and Ors..* AIR 1951 All 257. *JagmohanSahu. and Anr.* v. *State of Orissa* 1977 Cri LJ 1394 (Ori). *Niranjal Shankar Golikari* v. *The Century Shipping. and Mfg. Co. Ltd..* AIR 1967 SC 1098. *Girish* v. *State of Karnataka* ILR 1994 Kar. 439.
[17] 1995 Cri LJ 832(Mah).

received agent's commission it cannot be said that he engaged himself within trade The Supreme Court of India within *Kanwarjit Singh Kakkar* v *State of Punjab and Anr.*[18] has held that the demand or receipt of fee by a medical professional for extending medical help by itself cannot be held to be an illegal gratification as the amount so charged is towards professional remuneration So the offence u/s 168 IPC cannot be said to have been made out as the treatment of patients by a doctor cannot by itself be held to be engagement within a trade However the said act may fall within the ambit of misconduct to be dealt by way of under the Service Rules Similarly within *State of Gujarat* v *Mahesh Kumar Dheerajlal Thakka.*[19] the Supreme Court has held that 'private practice' cannot be termed as 'trade' as accepting of 'fee' does not involve profit making which is an essential ingredient of the term 'trade'.

So we may conclude that if public servants were allowed to engage within trade they would not be able to devote their undivided attention to their official work.

1.1.2 PUBLIC SERVANT UNLAWFULLY BUYING OR BIDDING FOR PROPERTY--

Under Section 169 of Indian Penal Code 1860 public servant is prohibited from unlawfully buying or bidding for property This section is an extension of section 168 of the Code The scope of the section is limited to properties sold by a public servant within his official capacity This is based on the principle that as he is placed within an advantageous position over the other he might influence the sale within his favour But if the sale is unconnected by way of the official position of the public servant he is not prohibited from purchasing or bidding for the property. and the section is not attracted For instance purchase of an impounded pony by a police officer.[20] and of a buffalo belonging to a District Board at an auction by a member of board were neither covered by this section.[21] It would be profitable for us to reproduce the language of S.169 of the Code which runs as under-- "Whoever being a public servant. and being legally bound as such public servant not to purchase or bid for certain property purchases or bids for that property either within his own name or within the name of another or jointly or within shares by way of others shall be punished by

[18] (2011) 6 SCR 895. See also *Raj Rajendra Singh Seth alias R.R.S. Seth* v. *State of Jharkhand. and Anr.* (2008) 11 SCC 681. *B. Noha*v. *State of Kerala* (2008) 11 SCC 681. *Madhukar Bhaska rao Joshi* v. *State of Maharashtra* (2000) 8 SCC 571. *M. Narsinga Rao* v. *State of A.P* (2001) 1 SCC 691.

[19] AIR 1980 SC 1167.

[20] *Rajkristo Biswa* (1871) 16 WR(Cri) 62. See also *V. Punne Thomas* v. *State of Kerla.* AIR 1969 Ker 81. *State of Orissa. and Ors.* v. *Titaghur Paper Mills Company Ltd.. and Anr..* AIR 1985 SC 1293. *Chet Ram* v. *State* 1976 Cri LJ 585 (All.).

[21] *Suraj Narian Chaube v State.* AIR 1938 Bom. 565.

way of simple imprisonment for a term which may extend to two years or by way of fine or by way of both; and the property if purchased shall be confiscated.[22]

The Supreme Court of India within *R Sai Bharathi* v *J Jayalalitha*[26] has held that under section 169 of Indian Penal Code 1860 public servant is prohibited from unlawfully buying or bidding for properties but such prohibition must flow from enacted law or rules/regulation framed there under No executive order could be considered such a law Hence code of conduct framed by Governor laying guidelines for conduct of ministers have no statutory force and are not enforceable within court of law As such Chief Minister is not legally prohibited from purchasing land belonging to government owned company The charge under sections 169 of Indian Penal Code 1860 is therefore liable to fail.

1.3 BRIBERY--

Bribery is an act of giving money or gift giving that alters the behavior of the recipient Bribery constitutes a crime and is defined by Black's Law Dictionary[23] as the offering giving receiving or soliciting of any item of value to influence the actions of an official or other person within charge of a public or legal duty Bribery as used within Encyclopedia Americana[24] is said to be voluntary receiving or giving anything of value within payment for an official act done or to be done and that it is not confined to judicial officers or other persons concerned within the administration of justice but it extends to all officers concerned by way of the administration of the Government Executive Legislative and Judicial and under the approximate circumstance military The Supreme of Court of India has observed that bribe is not charities but shrewd business Bribe is given not only to get things unlawfully done but also to get lawful things done promptly [25]

With the coalition governments coming into power during 1990's instabilities of government have become a common phenomenon within India As a result of this the anti--defection law instead of being an inhibitor of floor crossing became an opportunities for elected members to make quick money within *P V Narsimha Rao* v *State*[26] Sibu Soren & Suraj Mandal took money to save the Narsimha Rao Government from toppling Political leader would tend to maintain their political parties financially sound and at the same time insure themselves and their families

[22] Section 169 of the Indian Penal Code. 1860.
[23] AIR 2004 SC 692.
[24] Henry Campbell Black. *Black's Law Dictionary* 39 (1968).
[25] Drake De Kay.*Encyclopedia Americana* 205 (1968). [29]*Som Parkash* v. *State of Delhi* AIR 1974 SC 989.
[26] AIR 1998 SC 2120. See also *Rahim khan* v. *Khushi Ahmed. and Ors..* AIR 1975 SC 290. *Gadakh Yashwantrao Kankarrao* v. *E.V. alias Balasaheb Vikhe Patil. and Ors..* AIR 1994 SC 678. *Deepak Ganpatrao Salunke* v. *Governor of Maharastra. and Others* 1999 Cri LJ 224 (Mum.).

against uncertainties of future This led to increasing nexus between politicians and organized criminal.

Section 171--B which deals by way of bribery runs as under--

[27](1) Whoever—

(i) gives a gratification to any person by way of the object of inducing him or any other person to exercise any electoral right or of rewarding any person for having exercised any such right; or

(ii) accepts either for himself or for any other person any gratification as a reward for exercising any such right or for inducing or attempting to induce any other person to exercise any such right; commits the offence of bribery:~

Provided that a declaration of public policy or a promise of public action shall not be an offence under this section.

(2) A person who offers or agrees to give or offers or attempts to procure a gratification shall be deemed to give a gratification.

(3) A person who obtains or agrees to accept or attempts to obtain a gratification shall be deemed to accept a gratification. and a person who accepts a gratification as a motive for doing what he does not intend to do or as a reward for doing what he has not done shall be deemed to have accepted the gratification as a reward.

Section 171 B of Indian Penal Code 1860 defines bribery as giving or acceptance of a gratification either as a motive or reward to any person to induce him to stand or not to stand as a candidate or to withdrew from the contest or to vote or not to vote at an election It also include offer or agreement to give or offer and attempt to procure a gratification as explained within section 7 of the Prevention of Corruption Act 1988 includes an offer of gratification It is not restricted to pecuniary gratification or to gratification estimable within money.[28]

The Supreme Court within *Pillai* v *Dangali*[29] has held that money paid to a club to pay off its debt and to repair its premises by way of the object of inducing those of its members who are voters to record their votes within favor of the candidate is a bribe The motive of the briber and not the effect of the bribe is the test Similarly within *Shanti Lal* v *State*[30] the accused a candidate from election directs his agent to dissuade a rival candidate from standing for election by offering him money and the later accordingly offers a large sum of money to the rival candidate provided he

[27] Section 171B ins. by Act 39 of 1920. sec. 2.

[28] *Mohan Singh* v. *Bhanwarlal.* AIR 1964 SC. *Bankabehari* v. *Chittranjan* AIR 1963 Ori. 83. *Moolchand* v. *Rulia Ram* AIR 1963 Punj. 516.

[29] AIR 1942 Rang. 52. See also *Shaligram Shrivastava* v. *Naresh Singh Patel.* AIR 2003 SC 2128. *State of Punjab. and Ors.* v. *Bhajan Singh. and Anr..* AIR 2001 SC 2128.

[30] AIR 1993 Cal. 274. See also *Kuldeep Pednekar* v. *Ajit Pandurang Gogate. and Ors..* 2006 (4) Bom. CR 392. *Shiv Kirpal Singh* v. *ZakirHussian.* AIR 1968 SC 855.

withdraws from candidature It was held by the Supreme Court that the conduct of the accused comes by way of the definition of bribery contained within Section 171--B of the Indian Penal Code 1860 Again within *H.V Kamath* v *Nihal Singh*[31] it was held by the Apex Court that even a single act of bribery by or by way of the knowledge and consent of the candidate or by his agent however insignificant to invalidate an election But within *Deepak Ganpatrao Salunke* v *State of Maharashtra*[32] deviating from the above trend where a statement was made by Deputies Chief Minister of Maharashtra within a public meeting that if Republican Parties of India would support his alliance within the parliamentary election he will see that a member of RPI is made Deputies Chief Ministers of State It was held that the above statement does not amount to bribery defined under Section 171--B of the Indian Penal Code since such statement is not giving any offer to any individual There is nothing within the statement inducing any individual to exercise any electoral right within a particular manner Therefore seeking support of a political parties during the course of election and making an offer to political parties of some share within the political power for giving such support cannot be called as giving gratification as contemplated under Section 171--B of the Indian Penal Code 1860.

It was further pointed out that unless there is such give and take policy amongst the political parties the political alliance which is now necessary to form a coalition government is not possible When one parties on its own cannot get majorities within the house coalition government is the only alternation Judged within the light of these circumstances it was held that the statement does not amount to bribery within *Govind Singh* v *Harchand Kaur*[33] election petition was filed alleging corrupt practice on the part of returned candidate for sanctioning pension to old aged and handicapped persons It is held that since the charge of corrupt practices have to be proved beyond reasonable doubt and not merely by preponderance of probabilities the evidence relied upon by the High Court cannot be held to be of such probative value So the Supreme Court set aside the judgment of High Court within which the election of the appellant was declared void.

1.3.1 PUNISHMENT FOR BRIBERY--

Bribery is a very serious offence and has been made punishable under S.171E of the Code which runs as under--

[31] AIR 1970 SC 211. See also *Abdul Hussian* v. *Shamsul Huda.* AIR 1975 SC 1612.
[32] 1999 Cri LJ 1224 (SC).
[33] AIR 2011 SC 570.

"[34][whoever commits the offence of bribery shall be punished by way of imprisonment of either description for a term which may extend to one year or by way of fine or by way of both Provided that bribery by treating shall be punished by way of fine only.

Explanation:~ "Treating" means that form of bribery where the gratification consists within food drink entertainment or provision.]

The Supreme Court within *Mohan Singh* v *Bhanwarlal.*[40]considered the meaning of the term gratification by referring to the explanation to Section 123(1)(b) of the Representation of People Act 1951 and observed that gratification even by the above explanation is not restricted to pecuniary gratification or gratification estimated within money and it includes all forms of entertainment and all forms of employment for reward barring bona--fide election expenses Thus the term gratification may be taken to mean something valuable which is calculated to satisfy a person's aim object or desire whether or not that thing is estimable within terms of money.

The Supreme Court within *Trilochan Singh* v *Karnail Singh*[35] has evolved two tests to check out as to what would amount to an act of bribery The first test is to see whether the gratification is calculated to satisfy a person's aim object or desire and secondly whether the gratification would be of some value even if the value is not estimable within terms of money The gratification need not merely be of value to the person offered but also to anybody else The gratification need not be offered directly by the candidate himself Even if an agent on the instigation of the candidate offers any such gratification it will be sufficient to invoke the section.

Why bribery by treating is punishable by way of fine only? That should also be made punishable by way of imprisonment to deal by way of heavy hands by way of the menace of bribery So the section should be amended.

1.3.2 ILLEGAL PAYMENT within CONNECTION by way of AN ELECTION--

Money has always been a factor within politics and election But the amount of money spent within pursuit of public office today has brought new dimensions to an old problem Elections involve money and power. and unchecked power and money can lead to corruption To tackle the problem of illegal payment at election section 171--H of the Code provides "Whoever without the general or special authorities within writing of a candidate incurs or authorizes expenses on account of the holding of any public meeting or upon any advertisement circular or publication or

[34] Section 171E ins. by Act 39 of 1920. sec. 2.

[35] AIR 1968 Punj. 416. See also *SomLal* v. *Vijay Laxmi. and Ors..* AIR 2008 SC 2088. *Baburao Patel* v. *Zakir Hussian.* AIR 1968 SC 904. *Ram Dial* v. *Sant Lal.* AIR 2001 SC 855. *Narbada Prasad* v. *S. Gurdas Singh. and Ors..* AIR 1976 SC 27.

within any other way whatsoever for the purpose of promoting or procuring the election of such candidate shall be punished by way of fine which may extend to five hundred rupees.

Provided that if any person having incurred any such expenses not exceeding the amount of ten rupees without authorities obtains within ten days from the date on which such expenses were incurred the approval within writing of the candidate he shall be deemed to have incurred such expenses by way of the authorities of the candidate".

This section makes illegal payments within connection by way of an election not authorized by a candidate as an offence punishable by way of fine It is interesting to note that the punishment not exceeding five hundred rupees seems to be totally inadequate within the present day Similarly expenses incurred of not more than ten rupees as stated within the proviso clause does not make any sense now--a--days So the section must be amended The Supreme Court within *Common Cause* v *Union of India and others.*[36] has expressed its view relating to election expenditure that expenditure incurred by a political parties or by anybody or association or an individual (other than the candidate and his election agent) within furtherance of election prospects of a candidate will be excluded *The State* v *Siddhanath Gangaram* 1956 Cri LJ 1327 *(MP).M.A Muthiah* v.*S.A Ganesan* AIR 1960 Mad *H.H Raja Harinder Singh* v *S.Karnail Singh* AIR 1975 SC 271 *Parkash Singh Bada*l v *Union of India and Ors* AIR 1987 P&H 263 *Edward Ezra and Ors* v *The State* AIR 1953 Cal 263 from the expenditure incurred by a candidate if. and only if that expenditure has been shown within the account of the party/body/association/individual concerned and that account has been duly audited and submitted to the Income Tax authorities Otherwise such expenditure shall be presumed to be that of the candidate.

1.4 COUNTERFEITING OF COINS and GOVERMENT STAMPS--

The Reserve Bank of India is the governing body that issue currency notes and coins within India Counterfeiting of currency and government stamps is one of the organized white collar crimes which have assumed serious proportions globally It not only causes serious setbacks to the world's economy but also jeopardizes the genuine business transactions Nowadays the counterfeiting of currency notes is done by way of the help of modern equipment such as colour scanners colour copiers and printers as well as by offset process Chapter XII of Indian Penal Code 1860 from sections 230 to 263--A deals by way of offences relating to coins and government stamps A person is said to "counterfeit" who causes one thing to resemble another thing intending by means of that resemblance to practice deception or knowing it to be likely that

[36] AIR 1996 SC.3081. See also *Smt. Indra Nehru Gandhi* v *Shri Raj Narayan. and Anr.* AIR 1975 SC 2299

deception will thereby be practiced within *K Hashim* v *State of Tamil Nadu.*[37] it was held by Court that if one thing resembles another thing and if that is so and if resemblance is such that a person might be deceived by it there will be presumption of the necessary intention or knowledge to make the thing counterfeit unless the contrary is proved It would be profitable for us to discuss within detail the provisions of Indian Penal Code 1860 dealing by way of the offence of counterfeiting of coins and government stamps.

1.4.1 COUNTERFEITING INDIAN COIN--

The Code has severally penalized the counterfeiting of Indian coin and within this regard section 232 of the Code provides that whoever counterfeits or knowingly performs any part of the process of counterfeiting Indian Coin shall be punished by way of imprisonment for life or by way of imprisonment of either description for a which may extent to ten years. and shall also be liable to fine.

The Supreme Court within *Velayudham Pillai* v *Emperor.*[38] has held that one of the basic elements of counterfeiting is intention to practice deception or practicing resemblance by way of knowledge that this resemblance is likely to result deception Therefore any act by which deception cannot be intended or any act from which likely result of deception cannot be deduced cannot amount to deception So when there is no intention to circulate the coin and the offender only puts a counterfeit coin within the house of his enemy the act cannot amount to an offence under Section 231.

1.4.2 MAKING OR SELLING INSTRUMENTS FOR COUNTERFEITING INDIAN COIN--

Under Section 234 of the Code preparation to commit a crime has been made punishable It would be beneficial for us to reproduce the language of section 234 of the Code which runs as under--

"Whoever makes or mends or performs any part of the process of making or mending or buys sells or disposes of any die or instrument for the purpose of being used or knowing or having reason to believe that it is intended to be used for the purpose of counterfeiting [Indian coin] shall be punished by way of imprisonment of either description for a term which may extend to seven years. and shall also be liable to fine".[39]

1.4.3 POSSESION OF INSTRUMENTS OR MATERIALS FOR THE PURPOSE OF USING THE SAME FOR COUNTERFEITING--

[37] 2004(4) RCR (Criminal) 983 (SC).
[38] AIR 1937 Mad. 711.
[39] *Ibid* Section 235.

Mere possession of instrument and materials capable of counterfeiting coins is no offence Possession of such instrument should be by way of the intention of counterfeiting coins and the same is punishable by way of imprisonment of either description for a term which may extend to three years and shall also be liable to fine and if the coin to be counterfeited is Indian coin shall be punished by way of imprisonment of either description for a term which may extend to ten year and shall also be liable to fine.

The Supreme Court within *Khadim Hussain* v *Emperor.*[40] convicted the accused of an offence under this section because he was having within his possession three "dies'' and some instruments for the purpose of counterfeiting coins He was a goldsmith by occupation and the instruments found by way of him were for his work as a goldsmith The dies were deficient and complete counterfeiting coin could not be struck from them either singly or combined It was held by the Supreme Court that it could not be inferred from the mere possession of the dies incapable of striking a complete coin that the accused intended to manufacture coins The onus of proving the fitness of the material for the purpose of counterfeiting coin is upon the prosecution Similarly within *Zamir Hussain* v *Crown.*[41] it was held that under section 235 only the person who is within possession can be convicted .The other person who are living by way of him and against whom all that can be said is that they knew or were within a position to know that there were instruments and materials for counterfeiting within the house cannot be held guilties of this offence Upholding the above view within *Lachminiya Thakurian* v *Emperor.*[56] it was held that mere fact that the wife knew that certain instruments and materials are within the possession of her husband and also the place where those implements and materials were to be found does not necessarily indicate that she herself is within subordinate possession or within any kind of possession of them.

1.4.4 DELIVERY OF INDIAN COIN POSSESSSED by way of KNOWLEDGE THAT IT IS COUNTERFEIT--

Delivery of Indian coin to another by way of the knowledge of its being counterfeit is a very serious offence and same is punishable by way of ten years imprisonment and by way of fine The offence under section 240 has the following essential ingredients:~

(1) That the accused fraudulently or by way of intent that fraud may be committed was possessed of counterfeit coins;

(2) That the accused had the knowledge at the time when he became possessed of it that it was a counterfeit coin;

(3) That the delivery of the Indian coin was made by way of the knowledge it was counterfeit.

[40] 1950 Lah. 97.
[41] AIR 1925 Lah. 22.

The Hon'ble Court within *Ganga* v *State.*[42] has held that particular knowledge about the coin being counterfeit is not necessary to be established by positive evidence The circumstances might indicate on which a reasonable presumption could be raised that the accused ought to have known at the time when he became possessed of the coin that they were counterfeit.

1.4.5 Counterfeiting Government Stamp--

Section 255 to 263A of Indian Penal Code provides punishment for offences relating to stamps issued by government Counterfeiting of Government stamps has been made punishable by section 255 of the Code which provides that "whoever counterfeits or knowingly performs any part of the process of counterfeiting any stamp issued by Government for the purpose of revenue shall be punished with[59] [imprisonment for life] or by way of imprisonment of either description for a term which may extend to ten years and shall also be liable to fine.

Explanation – A person commits this offence who counterfeits by causing a genuine stamp of one denomination to appear like a genuine stamp of a different denomination.

1.4.6 SALE OF COUNTERFEIT GOVERNMENT STAMP--

Sale of counterfeit Government stamp has been made an offence under section 258 of the Code It would be profitable for us to reproduce the language Section 258 of the Code which runs as under-

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"Whoever sells or offers for sale any stamp which he knows or has reason to believe to be a counterfeit of any stamp issued by Government for the purpose of revenue shall be punished by way of imprisonment of either description for a term which may extend to seven years. and shall also be liable to fine".

In a landmark judgment of *Joti Prasad* v *State of Haryana.*[43] the accused were charged under sections 254 255 258 467 read by way of section 120--B of the Code and charges leveled against them were that they had conspired to do the illegal act of counterfeiting of government stamps but trial court acquitted them all On appeal to High Court confirmed the acquittal of all except the appellant who was convicted under section 258 and 259 of the Indian Penal Code on the ground that being a stamp vender he had knowledge or at least reason to believe that the stamps he was selling were counterfeit On appeal to Supreme Court his plea that he purchased stamps from the treasury was rejected as he neither produced register maintained by him nor made any efforts to summon the treasury records. and conviction was upheld.

1.4.7 HAVING POSSESSION OF COUNTERFEIT GOVERNMENT STAMPS--

[42] 1957 All LJ 283.
[43] AIR 1993 SC 1167.

The Indian Penal Code 1860 makes possession of counterfeit government stamp a crime This within other words makes preparation to commit a crime a punishable offence It would be beneficial for us to reproduce the provisions of section 259 of the Code which provides that whoever has within his possession any stamp which he knows to be a counterfeit of any stamp issued by Government for the purpose of revenue intending to use or dispose of the same as a genuine stamp or within order that it may be used as a genuine stamp shall be punished by way of imprisonment of either description for a term which may extend to seven years. and shall also be liable to fine.

1.5 AIMS AND OBJECTIVES OF THE RESEARCH

The current work examines critical issues such as the causes of banking frauds, bankers' responsibility in relation to the scope of deception, consequences of such incidents, RBI liability in such cases, and the adequacy of legal provisions to contain them, and attempts to look at the entire possible panacea to such a societal threat, so that financial institutions' integrity can be preserved.

1.6 RESEARCH QUESTIONS

1 What laws are in place to combat financial fraud?

2 How can financial fraud be identified and integrated into successful criminal justice jurisprudence?

3 What are the causes of fraud and how can they be detected and prevented?

4 What investigative agencies would be needed for an effective investigation, tracing, attachment, reconstruction, and prosecution of the property?

5 What form of justice delivery system should be used to ensure that the public receives prompt and efficient justice?

6 What laws should be put in place to ensure that officials making decisions based on business prudence and confide are shielded from excessive abuse during investigations and prosecutions on account of financial and banking fraud?

1.7 HYPOTHESIS

The main distinction between white and blue crime is that the regular, or blue crime criminals, are people from the underprivileged segment of society, while white collar crime criminals are from the upper class and conduct the crime in a more organized manner.

1.8 STATEMENT OF PROBLEM

White collar crime is a type of crime committed by people who are from a higher social class and come from a respectable community Over the course of their employment, they commit this crime People who commit this crime typically have a better understanding of technology, their particular profession, disciplines, and so on Since a few years, white collar crimes have largely grown They are also seen as committed in large organizations with a wide range of activities As a result, we may conclude that these crimes are widespread in trade, industry, education, and health care, among other areas Traditional crimes have been partly replaced by white collar crimes as the criminal profile has shifted dramatically in recent years.

1.9 RESEARCH DESIGN AND METHODOLOGY

This research was conducted using a doctrinal approach In order to draw inferences and conclusions, analytical descriptive, evaluative, and insightful methods were used A large number of books, journals, papers, documents, and other sources were examined The related matters on PCFs were also culled from a thorough review of the websites.

1. Doctrinal Research

- Case Studies and real time stories, books and their analysis on White Collar Crime.

- Analysis of real time factual stories of dreaded White Collar Crime

1.10 SIGNIFICANCE OF THE RESEARCH

In India, the definition of white collar crime White collar crime is described as a crime committed by educated people from a higher social class during the course of their employment The author of this paper has explored what distinguishes white collar crime from blue collar or ordinary crime It's also known as "educated and trained elites' crime." Since a few years, the most prevalent forms of white collar crimes have emerged in India And how it's turned into a socioeconomic crime

Aside from that, there are crimes committed by people in various professions, such as medicine, education, and law It illustrates a number of Indian laws that deal with the prosecution of these types of crimes Finally, the author will give his own recommendations at the end of the article.

CHAPTER--2

HISTORICALBACKGROUND OFWHITE--COLLARCRIME

CHAPTER--2
HISTORY OF WHITE--COLLAR CRIME

2.1 Introduction

Although forms of bribery and embezzlement or even monopolistic price fixing surely outdate recorded history the earliest documented case of white--collar crime law dates back to 15th century England The law enacted within 1473 was a response to embezzlement or larceny within what's known as the Carrier's Case a situation where the agent entrusted to transport wool attempted to steal some of it for himself.

However white--collar crime didnot garner much public attention until it became more widespread after the Industrial Revolution within Western industrial societies As companies rose within power they were able to squelch competitors and then implement monopolistic policies without fear of being outsold by other companies The public became enraged when they had to pay outrageously high prices for something that was previously cheap for no reason other than corporate greed But under the law manufacturers werenot doing anything wrong ---- it was perfectly legal However popular opinion held that this was corruption that should be illegal and warranted government intervention.

Political movements rallied for laws to prevent monopolistic practices and succeeded within the United States within 1890 when Congress passed the **Sherman Antitrust Act** It essentially attempted to make monopolies illegal Other industrialized countries like England had a history of penalties involving white--collar crime by this time but none so sweeping as the Sherman Act Some nations implemented a smattering of these laws known as competition or antitrust law but didnot strongly enforce them for very long Therefore the Sherman Act is generally considered the first modern competition law.

Stock fraud as you might guess is as old as the stock market itself One age--old scheme called **stock touting** occurs when someone lies about his company's prospects and promises sure--fire returns for investors After it's too late the investors find that the schemer deceived them and instead pocketed the money and ran off Whereas back within the day a conspirator might lie to say he had a company that was building railroads within other countries modern examples include those discovered upon the burst of the dot--com stock bubble when actual results fell far below promised returns.

What's more from time to time you may receive e--mails from people you donot know asking for your help like a wire transfer to claim some long--lost fortune or to act as a shipping agent These schemes are forms of Internet fraud. and they're often perpetrated by scammers working from

Internet cafes within Nigeria and Russia The government of Nigeria by way of financial support from the governments of the United States and Great Britain has ramped up its Economic and Financial Crimes Commission to crack down on con artists who symphony please to e--mail addresses throughout the world.

More anti--white--collar crime sentiment rose within the late 19th and early 20th century within the United States as a result of a group of journalists known as **muckrakers** These writers strayed from regular news reporting to expose corruption within the public and private sectors They wrote among other things of stock fraud insurance fraud and underhanded practices of monopolistic companies that had fallen through the cracks of the Sherman Act The muckrakers' exposés incensed the public and resulted within some reform By 1914 Congress attempted to solidify and strengthen the sentiment of the Sherman Act ---- which was used against labor unions by way of the **Clayton Antitrust Act** This act went further than the Sherman Act to make particular monopolistic practices illegal.

Nevertheless within the ensuing decades white--collar crime continued to rear its ugly head ---- or rather all too often go about unpunished This phenomenon led to the birth of the concept white--collar crime as we know it today which we'll talk about next.

2.2 The legacy of Sutherland

Sutherland's interest within the topic dates at least to the 1920s although the research resulting within his *White Collar Crime* was initiated during the depression years of the 1930s The first public treatment of the subject occurred when Sutherland titled his presidential address to the American Sociological Societies within 1939 "The White Collar Criminal." He was apparently drawn to the topic within his search for a general theory of crime The usual explanations within his day (and often today) stressed poverty and other pathological social conditions but argued Sutherland these factors could not be a general cause of crime if crimes were also committed by persons of respectability and high social status within the book--length version of the speech which appeared a decade later Sutherland aimed simultaneously to weaken theories depending on the behavior of the deprived and the depraved. and to provide support for his own social--learning approach to crime causation—the theory of differential association.

Sutherland was rather casual within his conceptualization of white--collar crime at times stressing social status at times behavior carried out within an occupational role. and at times crime committed by organizations or by individuals acting within organizational capacities The confusion is reflected within his most frequently cited definition:~ "White collar crime may be defined approximately as a crime committed by a person of respectability and high social status within the course of his occupation" His book was devoted however to the crimes of

organizations not of persons:~ seventies large corporations and fifteen public utilities Thus a firm basis for ambiguities had been laid Those following Sutherland sometimes focused on persons of high status sometimes on occupations. and sometimes on corporate bodies.

Sutherland's book described the illegalities committed by those corporations arguing that the corporations share most of the characteristics of professional thieves:~ their offenses are deliberate and organized they are often recidivists. and they show disdain for law Needless to say by way of these conclusions the book had a controversial reception Many within the social sciences hailed it as a landmark whereas many within law and business attacked it as misleading and distorted The principal basis for disagreement concerned the underlying concept of crime The "crimes" of the corporations Sutherland examined were rarely prosecuted within criminal court:~ they were violations of administrative rules or simply contract cases to be processed if at all within civil court Many within the legal communities insisted these were not crimes at all Sutherland's answer was that businessmen were more able to influence the course of legislation; it was only their greater power (relative to the lower--class criminal) that kept their offenses out of the traditional criminal law.

The battle over definition aside Sutherland's pioneering work stirred few fires within the two decades after its publication Detailed studies of particular offenses such as Donald Cressey's examination of the violation of financial trust were the exception rather than the rule Of the triumvirate of status occupation. and organization that underlay Sutherland's conception interest tended to turn away from the status dimension itself. and toward those crimes made possible because of the defendant's occupational role (Newman) Some analysts spoke not of white--collar crime but of occupational crime Offenders studied within these terms were not exclusively of high status They included retail pharmacists meat inspectors. and bank tellers Although a much--publicized case of price--fixing within the electrical industry within 1961 (Geis and Meier) helped sustain an interest within the topic of crimes committed through. and on behalf of organizations sustained study of organizational crime did not flower until the next decade Criminological research and theory continued to concentrate on juvenile delinquency and violent crime.

It is unclear why Sutherland's work generated so little new research or theory although several reasons are plausible The massiveness of Sutherland's undertaking as well as confusion regarding the concept itself may have played a part The 1950s and 1960s were not depression decades. and the problems of a younger generation occupied public and governmental attention It had also provided more convenient historically for social scientists to study the weak and deprived rather than those within more powerful positions The symbolic and evocative nature of

the concept remained however awaiting changing conditions for new meaning to be infused into it.

2.3 From offender to offense

Societal interest within white--collar crime grew rapidly within the 1970s rivaling the attention street crime had received within the preceding decade Prosecutors gave it higher priorities than within the past Targets of investigation included individual businessmen corrupt politicians. and such corporate activities as international business bribery the manufacture of dangerous products. and environmental pollution The renewed interest was motivated at least within part by the discovery of corruption and other illegal practices at the highest levels of government. and by a growing sensitivities to dangerous corporate practices The growth within interest was great enough that it could be fairly labeled a social movement (Katz 1980).When the pace of scholarship on white--collar crime also revived it became evident that the wide range of phenomena suggested by the concept had to be broken down into components Attention had focused so much on the nature of the offender that actual criminal behavior had gone unexamined It seemed to make little sense to include under a single rubric as diverse a set of activities as bank embezzlement land swindles price--fixing fraudulent loan applications. and bribery The first important shift away from the legacy of Sutherland was accomplished by taking the offense itself as the principal object of inquiry within the first such effort Herbert Edelhertz proposed to define white--collar crime as "an illegal act or series of illegal acts committed by nonphysical means and by concealment and guile to obtain money or property to avoid payment or loss of money or property or to obtain business or personal advantage" A related shift is to search for behavioral patterns that characterize different *types* of white--collar crime Susan Shapiro for example distinguishes fraud self--dealing. and regulatory offenses. and Mitchell Rothman separates frauds takings. and collusion.

The impulse that gives rise to typological efforts is the felt need to put order into the enormous range of behaviors at issue The statutes that define white--collar crime passed by legislatures for various purposes at various times are a patchwork Important as they may be for prosecution the legal categories are of limited value for analytic purposes A given statutory offense may include a wide array of actual behaviors; bank embezzlement for example may range from a simple theft by a bank teller to a complex fraudulent loan arranged by a trust officer Essentially the same behavior may be punished under statutes as different as those governing mail and wire fraud securities fraud. and false claims and statements Typologies allow one to see some of the similarities between crimes as different as bribery and price--fixing which share the element of collusive activity.

The underlying assumption of this type of analysis—still to be proved—is that parallels within behavior may suggest parallels within either the causal processes producing such behavior or within the methods of detection and enforcement brought to bear upon them Such work is likely to be only partially successful until there is greater agreement on the core properties of white--collar crime To the extent that the legal categories themselves are a function of concerns not reflected within the underlying conduct—a concern for example that the conduct be reachable by federal authorities or that regulatory agencies can police it—typologies that concentrate on underlying conduct may be prematurely dismissive of the important role played by legal categorization itself.

2.3 From offense to organization and consequence.

A second trend is to emphasize not behavior but its consequences This trend rediscovers issues that occupied reformers at the turn of the twentieth century—a concern for the power of organizations and the harms they commit From the late nineteenth century on harms caused by the production and sale of adulterated goods and similar activities were recognized as "strict liability" offenses—criminal acts not requiring proof of a guilties mind Throughout the twentieth century these activities. and many others later recognized to pose a similar threat came increasingly to be the subject of administrative regulation which was seen as a wiser and more effective device for protecting the public interest Regulation expanded as new dangers to health and to life itself were recognized—dangers to individuals posed by the air they breathed the water they drank the food and drugs they consumed the automobiles and other products they used. and the places at which they worked.

Rediscovery of the power of organizations to inflict physical damage as well as economic injury has led some scholars to direct their attention to specifically organizational offenses The central concern here is those actions taken by the officials or other agents of legitimate organizations that have a serious physical or economic impact on employees consumers or the general public (Schrager and Short) A growing number of analysts thus speak of organizations as offenders of "organizational deviance." and of illegalities committed through the organizational form This is a response to a societies within which organizations increasingly are major actors. and although it reflects experience within the United States both the concept of white--collar crime and a concern by way of corporate and governmental offenses are found throughout the world.

The focus on organizational offenses brings by way of it enduring issues of law and policy One is the question of the standard by which individual conduct is to be judged Should organizations' executives be sanctioned for failure to supervise middle--level officials engaged within wrongdoing? Should strict liabilities be employed as within some of the earlier public--welfare

offenses? How should sanctions be distributed between organization and employees? When the focus is on the corporate body itself there is the question of how best to protect against harmful corporate practices without stifling organizational innovation and creativity For example should unwanted conduct be deterred through increased penalties against the corporation? Or is it more effective to control wrongdoing by reaching inside the organization either through rules governing production processes and information flow or rules regarding the composition of the board of directors? The treatment of the offenses of organizations remains fraught by way of complex policy choices (Coffee; Kadish; Stone).

Finally there is the issue that sparked the original debate over the concept of white--collar crime:~ Are these offenses administrative rule violations or "real" crimes? The most complete follow--up study to *White Collar Crime* defines its subject as any act committed by a corporation that is punishable by the state whether through criminal administrative or civil law The title of this study *Corporate Crime* while reflecting the shift to the corporate form as a primary focus of inquiry maintains the view that such conduct be labelled criminal (Clinard and Yeager) The corporate sanctions examined however are overwhelmingly civil or administrative Thus the matter of definition remains controversial some forties years after Sutherland's initial exploration of white--collar crime.

The terms "white--collar crime" and its offshoot "organized crime." reflect a half--century--old movement to remake the very definition of crime Professor Edwin Sutherland a sociologist who coined the term "white--collar crime." disagreed by way of certain basic substantive and procedural principles of criminal law within his landmark book White Collar crime first published within 1949 Sutherland dismisses the traditional mens rea (criminal intent) requirement and the presumption of innocence He suggests that the "rules of criminal intent and presumption of innocence .. are not required within all prosecution within criminal courts and the number of exceptions authorized by statutes is increasing." could cast doubt on the balance of Sutherland's work.

Sutherland goes on to construct a class--based definition of "white--collar crime." He is concerned by way of who the alleged perpetrator was rather than what that person might have done "White collar crime." says Sutherland is "crime committed by a person of respectability and high social status within the course of his occupation." by way of this radical redefinition Sutherland attempted to drain the word "crime" of its meaning He made distinctions not on the basis of an act or intent but according to the status of the accused Professor Sutherland's supporters have stated:~

The term white--collar crime served to focus attention on the social position of the perpetrators and added a bite to commentaries about the illegal acts of businessmen professionals. and politicians that is notably absent within the blander designations such as "occupational crime" and "economic crime." that sometimes are employed to refer to the same kinds of lawbreakingEven his friends acknowledged that Professor Sutherland was "intent upon .. pressing a political viewpoint...." and that he did so within a "tone .. reminiscent of the preaching of outraged biblical prophets."

2.4 A Presumption of Guilt

Sutherland relies on the claim that both corporate and individual defendants are routinely deprived of the presumption of innocence within criminal proceedings His corporate examples however are nearly all civil and regulatory cases rather than actual criminal prosecutions Sutherland perhaps due to a lack of any substantive legal education conflates all enforcement activities against businesses (such as civil suits and settlement agreements) by way of criminal prosecution----even where no crime was ever committed To Sutherland proof of corporate culpabilities is unimportant He justifies his mislabeling by alleging that the powerful----despite the lack of criminal procedure protection that he recognizes and celebrates ----receive preferential treatment within the legal systemupdated 1983 treatise on white--collar crime explains:~

The thesis of this book stated positively is that persons of the upper socioeconomic class engage within much criminal behavior; that this criminal behavior differs from the criminal behavior of the lower socioeconomic class principally within the administrative procedures which are used within dealing by way of the offenders; and that variations within administrative procedures are not significant from the point of view of causation of crime

Many of the defendants within usual criminal cases being within relative poverty do not get good defense and consequently secure little benefit from these rules; on the other hand the commissions come close to observing these rules of proof and evidence although they are not required to do so

Sutherland intended to provide a basis for facilitating more convictions of executives and corporations by reconceptualizing crime through the term "white--collar crime." He began by equating the "adverse decisions" of regulatory agencies by way of criminal convictions As to people involved within business Sutherland sought to deemphasize the presumption of innocence and the mensrea requirement to facilitate establishing their criminal liability Yet what Professor Sutherland called a crime was often only a regulatory violation Intent is not normally considered within such enforcement actions; thus many of Sutherland's "crimes" may have been

inadvertent unintended acts Nevertheless Sutherland was determined to classify such acts as crimes.

Sutherland's influence is clearly evident within the contemporary substance and practice of federal criminal law Many federal offenses prosecuted under the label of "white--collar crime" are regulatory or public welfare offenses rather than true crimes The principal architect of the U.S Sentencing Commission's guidelines for sentencing organizations cites Professor Sutherland's "social science research." among that of others to explain the need for the guidelines namely the "evidence of preferential treatment for white collar offenders."

2.5 Stigma Without Sin

Often when convinced that a person or class of persons is guilties of a crime people become impatient by way of legal niceties Sutherland and others who assume the guilt of much of the business world believe that the ordinary protections of the law need not apply to persons involved within business When such attempts at pre--judgment are directed at any other group----even at terrorists----civil libertarians cry "tyranny." Yet a civil libertarian outcry within defense of corporate defendants appears most unlikely Concluding that those engaged within business do not deserve the presumption of innocence Professor Sutherland dispensed by way of the essential (and often most difficult to prove) element of crime:~ a guilties mind Although it would be unconstitutional to eliminate the presumption of innocence Sutherland tries to circumvent this by eliminating the mental element requirement.

Sutherland dismissed the most fundamental principles of criminal law within pursuing his belief that the law unfairly stigmatizes the poor while it does not stigmatize the rich and powerful enough Claiming that the law should treat the two classes more equally he wrote:~

Seventies five percent of the persons committed to state prisons are probably not aside from their unesteemed cultural attainments "criminals within the usual sense of the word." It may be excellent policy to eliminate the stigma of crime from violations of law by both the upper and the lower classes but we are not here concerned by way of policy

Sutherland did not seek to eliminate the stigma of crime (although dispensing by way of the intent requirement should theoretically achieve this goal) Rather he sought to expand it The concept of "white--collar crime" has ensured that within the quest for greater egalitarianism the stigma of crime has been applied against much of corporate America But before societies stigmatizes and punishes a criminal defendant the rule of law requires that reliable procedures determine the defendant's culpability Although some academics might wish it were so it is not a crime to be wealthy or powerful.

By disregarding culpability Sutherland sought to apply the stigma usually associated by way of criminal convictions to businesspeople and corporations within non--criminal regulatory proceedings His book charged that "70 corporations committed crimes according to 779 adverse decisions the criminalities of their behavior was .. blurred and concealed by special procedures." within Sutherland's view the complexities of business transactions may make it more difficult to prove criminal activity But it is equally possible that complexities was evidence that within a particular case no criminal conduct occurred Without requiring proof beyond a reasonable doubt of a clearly stated criminal intent there is no basis for distinguishing guilties from innocent actions When prosecutors indict corporations or their executives for federal crimes relaxed standards for proving criminal intent result within convictions where actual innocence has been "blurred and concealed." Traditionally. and for good reason the stigma of crime attaches only to individuals proven to have been "morally culpable" by virtue of having acted by way of a guilties state of mind within Sutherland's view this traditional protection is an antiquated technicality Rather culpabilities should involve an externalized standard of whether a defendant's acts violated the "moral sentiments" of the people Of course as the Supreme Court has forcefully stated the most basic "moral sentiment" is that societies not stigmatize persons as criminals unless they are proven to have a guilties mind.

The contention that an injury can amount to a crime only when inflicted by intention is no provincial or transient notion It is as universal and persistent within mature systems of law as belief within freedom of the human will and a consequent ability and duties of the normal individual to choose between good and evil A relation between some mental element and punishment for a harmful act is almost as instinctive as the child's familiar exculpatory "But I didnot mean to." White--Collar's Sociological Echoes Today"

Sutherland and his successors greatly expanded the scope of crime by shifting the focus to corporations and individuals within the upper socioeconomic classes A lawyer--sociologist critic of Sutherland's work Paul W Tappan long ago noted that Sutherland's definition of crime departed from the legal definition Tappan charged that this development was a "seductive movement to revolutionize the concepts of crime and criminal...." According to Tappan Professor Sutherland's definition of "white--collar crime" includes "a poor a sinner a moral leper or the devil incarnate but he does not become a criminal through sociological name--calling." The term "white--collar crime" has expanded even further to include such an array of crime that it has become too amorphous for analysis Some sociologists finding even Sutherland's very loose definition "too restrictive." "have dropped the class of the offender as a relevant element." Thus "white--collar" crime has now become a division of organizational crime One example is the

Justice Department effort to force corporations to waive their privilege against self--incrimination as a condition of pleading guilty This nascent trend is consistent with and sociologically derived from Sutherland's thesis that "white--collar" criminals are not entitled to the same constitutional protections afforded other defendants Recently and rather remarkably the Justice Department has espoused an essentially class--based view of the law within requesting that the Sentencing Commission disallow departures from the sentencing guidelines for "white collar criminal defendants who typically have sophisticated counsel." within short Sutherland's influence continues to this day Indeed compared to contemporary theoreticians Sutherland might seem to have been a veritable cheerleader for corporate America Although mentored by a protégé of socialist Thorstein Veblen Sutherland "fundamentally was an advocate of free enterprise." albeit a highly regulated form thereof At the conclusion of his book he said that the upper class commit many crimes but he could not say whether "the upper class is more criminal or less criminal than the lower class for the evidence is not sufficiently precise to justify comparisons and common standards and definitions are not available " By contrast and despite a lack of evidence Sutherland's own protégé Donald Cressey has repeatedly preached to college students within his standard college text on Criminology that "the people of the business world are probably more criminalistic than the people of the slums." Cressey's views are influential He was instrumental within the creation of the "enterprise" concept at the core of the Racketeer Influenced Corrupt Organizations Act (RICO) Supposedly designed to target "organized crime." prosecutors have used this statute to indict all kinds of corporations. and private parties have used it to sue most major corporations as well as the Catholic Church All have been labeled "organized criminals." and thus Sutherland's legacy continues to echo today.

CHAPTER--3

CLASSIFICATIONOFWHITE COLLARCRIMES

3.1 Introduction

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 within an "other" category Nevertheless law enforcement officials agree that white--collar crime is a major problem.[44]

The earliest major statement regarding the kinds of behaviour which later came to be classified as white--collar crime was made by an American sociologist Edward A Ross (1866--1951)10 However the initial public use of the term itself was made by his contemporary Edwin H Sutherland (1883--1950) within his presidential address to the American Sociological Societies within 1939[45].

Lambroso the father of criminology believed that criminals were different physically from normal persons and they had physical characteristics of savage and inferior nature which gives them atavistic qualities Criminals within whom atavistic qualities manifested were categorized as "born criminals" the other group known to him were “insane criminals” and the third are "those" Criminaloids who are persons who commit criminal acts or vicious acts under certain circumstances There is no physical stigma nor is there mental aberration Otherwise than their malicious act they are quite normal persons[46].

It is this third category which was utilized to characterize the class of offenders known as white--collar criminals He identified the following typical characteristics of criminaloid.

(1) The key to the criminaloid is not evil impulse but moral insensibility They want nothing more than what we all want i.e money power consideration within a word success But they are within hurry and they careless as to the means More often they are consumers of customer -- made crime They are buyers than practitioners of the sin.

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[44] Friedrichs. David O. 2004. Trusted Criminals:~ White Collar Crime within Contemporary Society. 2d ed. Belmont. Calif.:~ Thomson/Wadsworth.Monks. Robert A. G... and Nell Minow. eds. 2001. Corporate Governance. 3d ed. Malden. Mass.:~ Blackwell.

[45] It shows how recently developed. discipline white--collar crime is indeed.

[46] G. Geis. Supra. note 10 at 30--37.

(2) Criminaloids are not anti--social by nature Nonetheless they are adulterators rebaters free booters. and fraud promoters They receive from the communities the credit for the good they did but not shame of the evil deed they have worked for relentlessly.

(3) The Criminaloids practice a protective mimicry of the good--honest man They are often to be found within the assemblies of the faithful They counterfeit good citizen They are patriotic and parties supporters.

(4) The criminaloids play with--the support of his local people as his parties members congregation against the larger group Their victim is the weak consumers for instance Their ally is the strongman the politician the official the paster.

In all criminaloids flourish until such time the growth of morality and law co--jointly overtakes the growth of opportunity It is of less use to bring law abreast of time if moralities lags far behind Ross concluded by saying "the prophet message the sage's lesson the scholar's quest and the poets dream would be sacrificed to the God of Things.

3.2 Sutherland Theme

Even before Edward A Ross Professor A lbert M oris has called on people of sense to take note of the danger posed by what he called criminal capitalists The muckrakers' movement has followed suit since then What makes Sutherland's contribution unique within this regard is that he was the first criminoiogist who sought to extend the frontiers of crirninologist Prior to him criminoiogist were confined themselves to what we now know as traditional crimes.

Demonstrating the fact that crime can be found to exist beyond the focus of popular preconception Sutherland defined white--collar crime as "crime committed by a person of respectability and high social status within the course of his occupation" Later on however he seemed to have refined his conceptualization of the white--collar criminal by defining it as" person of the upper socio--economic class who violates the criminal law within the course of his occupational or professional activities".

Sutherland's definition of white--collar crime is therefore built upon three overlapping types of misbehaviours (crimes).

(1) Any crime committed by a person of high status (whether or not it is done within the course of their occupational activities) is represented by the 1st circle.

(2) Those crimes committed on behalf of organizations (by people of any status) is shown within the 2nd circle.

(3) Those crimes committed against organizations (whether or not these are carried out by people working within the same organization another organization or none at all) is referred to within the 3rd circle.

Aside from this there can be many other types of typologies sharing one or more the types of behaviours mentioned above or one may introduce new elements from without or drop some factors from within all the same none of them should be permitted to disturb either the tenet nor the scope of white--collar crimes as envisaged by Sutherland This presentation would therefore take care of much of the criticism labeled against him.

The other point of contention by way of regard to white--collar crime relates to the question of unit of analysis i.e the diverse catalogue of behaviours that are subsumed under white--collar crime This is quite understandable for this particular category of crime includes truly many different groups and kinds of behaviours and as such the different types of behaviours are not likely to have a common explanation Nor could they be attributed to certain and definite cause and effect relationship The criticism although valid should not be and is not geared towards annihilating the entire conceptual framework of white--collar crime Instead it should rather be taken as a suggestion for further research.

With respect to social status of the offender Sutherland conceptually limited white--collar crime to violation of the criminal laws regulating occupations by persons who are "respectable" or of the "upper socio--economic class" The significance of emphasizing the social or economic status of the offender can be nothing other than to make the distinction clear vis--a--vis traditional crimes which more often than not is associated by way of those classes or section of society which are found at the lawyer stratum of the socio--economic ladder There are however criminologists who by introducing solely crimes of occupational nature would like to change the entire subject matter to occupational crime which is entirely another matter.

3.3 Re--Oriented White--Collar Crime

In relation to occupational activities that needs critical understanding is the question of making the distinction clear by way of respect to the relationship that exists between and among occupational behaviours occupational deviations and occupational crimes.

A graphic representation of the relationship between the violation of legal norms and deviations

from occupational norms within the larger framework of occupational behaviour may take the following shape[47].

General framework of occupational behaviour Behaviour within violation of the law Occupational deviation.

3.4 WHITE--COLLAR CRIMES and SOCIO--ECONOMIC OFFENCES

The Law Commission of India within its 47th Report has meticulously articulated the inter--relationship between white--collar crime and socio--economic offences within the following words:~

"White--collar crime one may describe it as committed within the course of one's occupation by a member of the upper class of society A manufacturer of drugs who deliberately supplies substandard drugs is for example a white collar criminal So is if a big corporation guilties of fraudulent evasion of tax A person who illegally smuggles (for his personal use) costly television sets is not a white--collar criminal within the above sense there being no connection between his occupation and the crime committed by him Nor is the pensioner who submits a false return of income But all of them are guilties of socio--economic offences which affect the health or material welfare of the communities as a whole. and not merely the individual victim Similarly economic offences are those which affect the countries economy and not merely the wealth of an individual victim[48].

Hence unlike white--collar crime socio--economic offences shouldnot necessarily be committed within connection of one's occupation within white collar crime nexus between the offending act and occupation should be established whereas within socio--economic off ences there is no such requirement What is required is that the offence should be committed against either or both the health or material welfare of the communities or against the economic interest of the country within question and within both cases the individual victim is not within issue but that of the communities or societies at large Nor is the status of the tort--f eassor.

It could therefore be submitted that socio--economic offences does not only extend the scope of the subject matter of white--collar crime as conceived by Sutherland and as appreciated by others but is also of wider import.

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[47] Richard Quinney. as edited by G. Gies. Supra. note 25. at 286.
[48] Law Commission of India. 47th Report. p. 4 (1972).

3.5 Mens Rea

Next to actusrea the second essential ingredient within crime is mens rea Legal "mens rea" has been defined by Glanville Williams within the following manner.

"It refers to the mental element necessary for the particular crime and this mental element may be either intention to do the immediate act or bring about the consequence or (in some crimes) recklessness as to such act or consequences These two concepts hold the key to the understanding of a large part of criminal law some crimes require intention and nothing else will do but committed either intentionally or recklessly Some crimes require particular kinds of intention or knowledge".

As a result the maxim actus no facit reum nis mens sit rea is rightly regarded as one of the most important common law principles of criminal liability Yet mens rea presents a highly abstract and subjective principle Nonetheless it has attained a high degree of moral authority since it enjoys support from the soundest theoreticians within addition to this it also has historical authorities due to the mass of case laws built over the past centuries Inquiries made over the last two centuries made it possible to identify four in--built principles deeply integrated within the concept of mens rea For vivid exposition they are described briefly as follows:~

(1) "The malice principle:~ the essence of malicious conduct is conduct wrongfully directed at a particular interest (personal say or proprietary)" whether or not that one foresaw that harm to interest suffered by the victim would result.

(2) "The proportionalities principle:~ Where [one] acts maliciously towards [another] and causes worse harm than anticipated the greater the injury intentionally done to [the victim] the greater the crime for which [the offender] may be criminally liable respecting the harm done must not be disproportionate to the harm intended if criminal liabilities for the harm done is to be justified.

(3) "The labeling principle:~ when a particular kind of criminal wrong can also be reflected within morally significant label such as" murder" it may be right to recognize circumstances within which the wrong has been committed but the label is not deserved Conversely there may" be circumstances within which one wishes to use a more stigmatic label for a more serious manifestation of an identical wrong.

(4) The indirect malice principle:~ where an offender wrongfully aims his conduct at one kind of interest and. invades another kind of interest his conduct within invading that other interest is not to be regarded as malicious unless he foresaw the invasion as possible outcome of his conduct".

As the saying has it "The stone belongs to the devil when it leaves the hand that threw it" for an action may have multiple consequences and these consequences belong to the original action as an integral part of it As regards the state of .mind malice principle is not just a principle of culpabilities that competes by way of the correspondence principle within the minds of criminologist when thinking about criminal culpability as indeed it is and true.

While dealing by way of mens rea it would be convenient to group the various crimes into four classes; Crimes within which.

(1) the mens rea is found on an intention to commit an illegal act (general intention).

(2) a particular intention is required (e.g burglary is under English Law house breaking by night by way of intent to commit felony.

Negligence will suffice (e.g; management of vehicles within public streets).

It is the last category which is a matter of interest for our purpose Under certain circumstances a state may prohibit by statutes the doing of certain acts irrespective of considerations of mens rea.

3.6 Strict Liability

The underlying principle or justification of such an approach may be found within what Ruscoe Pound has said:~

"The good sense of courts has introduced a doctrine of acting at one's peril by way of respect to statutory crimes which express the needs of society Such statues are not means to punish the vicious will but to put pressure upon the thoughtless and inefficient to do their whole duty within the interest of public health or safeties or morals'".

The liabilities created is qualitatively different form that attached to ordinary off ences requiring the element of mens rea Strict liabilities is now well recognized by case--law and extensive literature So much so that it has been said that strict liabilities has been by way of us "so long that it has become accepted as a necessary evil" The observation of the Privy Council made within this respect would bring home the entire conceptual framework:~

'Where the subject matter of the statute is the regulation for the public welfare of a particular activities statutes regulating the sale of food and drink are to be found among the earliest examples It can be and frequently has been inferred that the legislature intended that such activities should be carried out under the conditions of strict liability The presumption is that the statute or statutory instrument can be effectively enforced only if those within charge of the relevant activities are made responsible for seeing that they are complied by way of when such a presumption is to be inferred it displaces the ordinary presumption of mens rea Thus seller's of meat may be made responsible for seeing that the meat is fit for human consumption and it is no answer for them to say that they were not aware that it was polluted" (emphasis added).

In short there are cases wherein intention to commit a breach of the statute need not be shown The breach within fact is enough.

The entire argument relating to the displacement of mens rea has been beautifully recapitulated within the Supreme Court of India within its decision of *State of Maharashtra vs M.H George*[49].

In this case the accused was prosecuted for bringing into India prohibited quantities of gold within violation of the prohibition i.e. the Foreign Exchange Regulation Act 1947 which lays an absolute embargo upon persons who without permission of the Reserve Bank bring or send to India any gold As a matter of fact the accused Mr M .H George was a passenger from Zurich to Manila within Swiss plane Upon landing in

Bombay Twenty--four kilos bars of gold was found on his person which he had not declared.

The holding of the majorities was that "mens rea within the sense of actual knowledge that the act done is contrary to law is not an essential element under Sec.8 (1) read by way of Sec.23 (1A) of the Foreign Exchange Regulation Act 1947" There was an agreement on the point that unless the statute within question either clearly or by necessary implication rules out mens rea as a constituent part of a crime an accused should not be found guilties of an offence unless he has got a guilt mind They declared that "(A) absolute liabilities is not to be lightly presumed but has to be clearly established" However within the case at hand "the language of the statute and relevant notifications" their Lordship held that "there is no scope for the invocations of the rule that besides

[49] 1965 AIR 722. 1965 SCR (1) 123

the mere act of voluntarily bringing gold into India any further mental condition is postulated as necessary to constitute an offence of the contravention referred to within Sec.23 (1A)".

It is further asserted that:~

"The Act is designed for safeguarding and conserving foreign exchange which is essential to the economic life of a developing country The very object and purpose of the Act and its effecti veness as an instrument for the prevention of smuggling would be entirely frustrated if a condition were to be read into Sec 8 (I) or Sec 23 (1A) of the Act qualifying the plain words of the enactment that the accused should be proved to have knowledge that he was contravening the law before he could be held to have contravened the provisions"[50].

However within the subsequent decision of the Supreme Court it was held that the accused who was apprehended storing excess quantities of food grains within the belief that his application for license will be granted was found not guilties on the ground that storage of grain under a bonafide belief could not be said to be international contravention.

A number of decisions of the Supreme Court of India however point to the fact that there is an initial presumption within favour of the need to read mens rea within all penal statutes but it has to be ascertained whether the presumption is overborne by the language of the enactment read within the light of the objects and purposes of the said statute Whether the enforcement of the law and the attainment of its purpose would not be rendered futile is one other consideration that has to be taken a fortiori Conversely where it cannot be said that the object of the Act would be defeated if mens rea is read into it as an ingredient courts should indeed be slow to dispense by way of it.

Striking illustration of modification of the ordinary rule regarding mens rea is to be found under the prevention of food Adulteration Act36 wherein it is provided that:~

"It shall be no defense within a prosecution for offence pertaining to the sale of any adulterated or misbranded article of food to allege merely that the vendor was ignorant of the nature substance or qualities of the food sold by him or that the purchaser having purchased any article for analysis was not prejudiced by the sale".

Having said this about strict liability the train of logic requires at least the treatment of the main features of vicarious liability First and foremost vicarious liabilities is an aspect of strict

[50] Subha Rao. J. within his dissenting opining stated means rea is an essential ingredient of a offence. but his may be rebutted by express word or by necessary implication. But the mere fact that the object of a statute is to promote welfare or to eradicate grave social evil within itself is not enough.

liabilities within the sense that such a person ought not to have been held answerable to what he himself has not done.

3.7 Vicarious Liability

Unlike within the law of tort within criminal law a master is not held vicariously liable for the act of his servants or agent on the principle of respondent superior37 This doctrine or maxim holds that a master is liable within certain case for the wrongful acts of his servants and a principal for those of his agents Where the legislature has found it to lay down an absolute prohibition to hold liable the employer for the employee and the principal for his agent for the acts of the latter so long as such act is done within the course of employment or within discharge of the delegated responsibility respectively then the maxim qui facit per alium facit per se applies Under this doctrine the employer may be convicted although he is not within any way morally culpable It is within pursuance to this principle that Indian Penal code under section 154 and 155 holds a master criminally liable for acts committed by his agents or servants.

The doctrine of vicarious liabilities is often times invoked under special enactments The peculiar characteristics and the rationale which prompted the enactment of vicarious liability have been nicely enunciated by Lord Devlin within the following manner:~

"The first distinguishing mark of quasi--criminal law then is that a breach of it does not mean that the offender has done anything morally wrong The second distinguishing mark is that the law frequently does not care whether it catches the actual offender or not Owners of goods made liable for the acts of their agents even if they have expressly forbidden the act which caused the offence This sort of measure can be justified by the argument that it induces persons within charge of an organization to take steps to see that the law is enforced within respect of things under their control"[51].

Exactly the same doctrine applies to companies which are found in and around the same circumstances.

3.8 Corporate Vicarious Liability

A corporation is a legal entities incorporated by law for preserving perpetual succession of certain rights A corporation is within other words a group of human beings authorized by law to act as legal unit It is endowed by way of legal personality and it has a name and seal of its own

[51] Devlin. as quoted by Law commission. supra. note 30. at 36. and 37.

Nonetheless a corporation is not owning to its peculiarity put on the same level as a natural person by way of respect of criminal liabilities for its deeds[52].

At one time within the past it was believed that penal liabilities could not be fasten onto a corporation principally because it does not act in and for its own self i.e it has no mind and body of its own so as to form the necessary guilties mind to commit a crime "A corporation has neither a body to be killed nor a spirit to be dammed" Secondarily since a corporation can only act through its resolution at a meeting. and since any resolution for doing a criminal act should necessarily be Ultra Vires consequently then there could not be a situation where a corporation would be subjected to criminal liability.

Owing largely to increase within the rate of industrialization the immunities a corporate entities has enjoyed so far from criminal liabilities is waning Partly it was to bring such legal entities as companies within the ambit of criminal law that attempt was made to make distinction between offences of nonfeasance and off ences of misfeasance.

Accordingly within case of the latter the individual tort--feasor was to be held liable.

Further development has recently taken place whereby the rule that makes the acts of directors are treated as those of the company Conversely the acts of the company are also being treated now--a--days as those of all its directors Hence every director or officer shall thus be guilties of that offence unless he proves that it was committed without his consent or that he has exercised all due diligent towards preventing the commission of such offences The principle thus highlighted by the law commission of India has been vividly reflected within section 179(I) of The Prevention of Food Adulteration Act 1954.

"Where an offence under this Act has been committed by a company":~

(a) (i) the person if any who had been nominated under--section (2) to be within charge of. and responsible to the company for the conduct of the business of the company (the persons responsible) or

(ii) where no person has been so nominated every person who at the time the offence was committed was within charge of. and was responsible to the company for the conduct of the business of the company; and.

[52] K.D. Gaur. Criminal Law. Cases & Materials. pp. 28--229 (2nd Ed.. N.M. Tripathi Private Limited. 1985).

(b) The company; shall be deemed to be guilties of the offence and shall be liable to be proceeded against and punished accordingly.

Provided that nothing contained within this sub--section shall render any said person liable to any punishment provided within this Act if he proves that the offence was committed without his knowledge and that he exercised all due diligence to prevent the commission of such offences"

Although stipulation by way a Proviso (which is uncommon) to the effect that such offender would not be held liable if he proves that the offence was committed without his knowledge and that he exercised all due diligence to prevent the commission of such offence would have the actual effect of allowing entrance through the backdoor what you have ousted within broad day light from the living room.

From the scheme of section (17) of the Act one learns that the person within charge of the company must be prosecuted along by way of the company under this section.

To wind up our discussion made so far it would be well within point to recapitulate the following essential points around which our argument has been spinning.

1 White--collar crime is endemic to industrial society and as such Sutherland's definition which state that white--collar crime is "a crime committed by a person of respectability and high social status within the course of his occupation" is very much true to this date The fact that these crimes are characteristically violations of trust either by duplicities or misrepresentation placed within a person by virtue of this occupational norms and high position within the societies is the crucial point of departure.

3.9 APPLICATION OF M ENS REA within STATUTORY OFFENCES

The question whether the common law requirement or mens rea must be imported into every crime defined within the statute even where it is not expressly mentioned as an ingredient has been discussed within a number of cases both English and Indian R.vs Prince[53] and Queen vs Tolson[54] are the two landmark decisions on the subject The conception of mens rea was introduced into the statutory off ences by the judges by means of 'Construction' without any Parliamentary sanction There are two schools of thought One embodied within the judgment of Wright J. within Sherras

[53] Ibid.
[54] Ibid

v De Rutzen[55] that "in every statute mens rea is to be implied unless the contrary is shown; and the second is that of Kennedy L.J. within Hobbs v Winchester corporation44 that you ought to construe the statute literally unless there is something to show that mens rea is required On either view mens rea is implied within certain statutes and not within others although there are on words within the statute itself to show a recognition of mens rea and judges provide for it on their own authority.

For a better illucidation of the subject it would be useful to discuss some of the cases within detail The first of such cases is R vs Prince Henry Prince the prisoner was charged under section 55 of the Offence Against the Persons Act 1861 for having taken one Annie Philips an unmarried girl being under the age of 16 year out of the possession and against the will of her father or mother or any person having the lawful care and charge of her.' It was prove that the prisoner did take the girl out of the possession an against the will of her father and also that she was under 16 years All the facts necessary to support for conviction existed except that the girl though proved by her father to be fourteen years old looked very much older than that and the jury found upon reasonable evidence that before the defendant took her away she has told him that she was of eighteen years and that the defendant bona fide believed that statement. and that such belief was reasonable.

It was contended that although section 55 of the statute under which this offence was created did not insist on the knowledge on the part of the prisoner that the girl was under sixteen as necessary to constitute the offences the common law doctrine of mens rea should nevertheless be applied and that there could be no conviction within the absence of a criminal intent.

It was held that the prisoner's belief that the girl was eighteen years old is no defence The following judgment was delivered by Blackburn J " within this case we must take it as found by jury that the prisoner took an unmarried girl out of the possession and against the will of her father. and that the girl was within fact under the age of sixteen but that the prisoner bonafide. and on reasonable grounds believed that she was above sixteen viz eighteen year old No question arises as to what constitutes a taking out of the possession of her father; nor as to what circumstance might justify such taking as not being unlawful; nor as to how far an honest though mistaken belief that such circumstance as would justify the taking existed might form an excuse; for as the case is reserved we must take it as roved that the girl was within the possession of her father and that he

[55] Non--fessance means that the total omission or failure of an agent to act upon the performance of some district duties or undertaking which he has agreed by way of this principal; misfeasance means the improper doing of an act which the agent might lawfully do; malfeasance is the doing of an Act which ought not to do at all.

took her knowing that he trespassed on the father's rights and had no colour of excuse for so doing."

The question therefore is reduced to this:~ whether the words within section 55 that 'whosoever shall take any unmarried girl being under the age of sixteen out of the possession of her father' are to be read as if they were being under the age of sixteen. and knowing she was under that "age" No such words are contained within the stature nor is there the word 'maliciously' 'knowingly' or any other word used that can be said to involve a similar meaning.

The argument within favour of the prisoner must therefore entirely proceed on the ground that within general a guilties mind is an essential ingredient within a crime. and that a statute creates a crime the intention of legislature should be presumed to be to include knowingly within the definition of the crime. and the statute should be read as if that word were inserted unless the contrary intention appears We need not inquire at present whether the canon of construction goes quite so far as above stated for we are of opinion that the intention of the legislature sufficiently appears to have been to punish the abduction unless the girl within fact was of such an age as to make her consent an excuse irrespective of whether he knew her to be too young to give an effectual consent and to fix that age at sixteen.

But what the statute contemplates. and what I say is wrong is the taking of a female of such tender year that she is properly called a girl. and can be said to be within another's possession within that other's care or charge No argument is necessary to prove this; it is enough to state the case The legislature enacted that if anyone does this wrong act he does it at the risk of her tuning out to be under sixteen This opinion gives full scope to the doctrine of mens rea If the taker believed he had the father's consent though wrongly he would have no mens rea So if he did not know she was within anyone's possession nor within the care or charge of anyone within those cases he would not know he was doing the act forbidden by the statute – an act which if he knew she is within possession and within care or charge of anyone he would know was a crime or not according as she was under sixteen or not He would not know he was doing an act wrong within itself whatever was his intention if done without lawful cause.

In this case a distinction was drawn between acts that were within themselves innocent but made punishable by statute (malum prohibitum) and acts that were intrinsically wrong immoral (malum within se) within the former a belief a reasonable belief within the existence of facts which if true would be a good defence; but within the latter case such a belief was immaterial

unless of course the law made it otherwise The man who acted under such erroneous belief took the risk and should suffer the consequence.

The same principal applies within other cases A man was held liable for assaulting a police officer within the execution of his duty Though he did not know he was a police officer Why? Because the act was wrong within itself So also within the case of a burglary could a person charge claim an acquittal on the ground that he believed it was past six when he entered?

It seems to me impossible where a person takes a girl out of her father's possession not knowing whether she is or is not under sixteen to say that he is not guilty; and equally impossible when he believes but erroneously that she is old enough for him to do a wrong act by way of safety I think the conviction should be affirmed.

The Queen v Tolson[56] is another important case on the subject within this case the prisoner was married to Mr Tolson on September 11.1880.

Mr.Tolson deserted her on December 19 1881 The prisoner and her father made inquiries about Tolson and learnt from his elder brother and from general report that he had been lost within a vessel bound for America which went down by way of all hands on board On January 10 1887 the prisoner supposing herself to be a widow went through the ceremony of marriage by way of another man The circumstances were all known to the second husband and the marriage ceremony was within no way concealed within December 1887 Tolson retuned from America thereafter the prisoner was charged for offence of bigamy under section 57 of the Offence Against the Person Act 1861 for having gone through the ceremony of marriage within seven years after she had been deserted by her husband The jury found that at the time of the second marriage she within good faith and reasonable ground believed her husband to be dead.

Section 57 provides:~ Whoever being married shall marry any other person during the life of the former husband or wife shall be guilties of felony." Proviso to the same section lays down:~ "nothing within this Act shall extend to any person marrying a second time whose husband or wife shall have been continually absent from such person for the space of seven years past. and shall not have been known by such person to be living within that time."

It was held that a bona fide reasonable grounds within the death of the husband at the time of the second marriage afforded a good defence of the indictment. and that the conviction was wrong.

[56] Supra note 11 at p. 168

In this case the following principles were laid down:~

(i) Although Prima facie and as a general rule there must be a mind at fault before there can be a crime it is not an inflexible rule. and a statute may relate to such a subject matter and may be so framed as to make an act criminal whether there has been any intention to break the law or otherwise to do wrong or not There is a large body of municipal law within the present day which is o conceived.

(ii) Prima facie the statute was satisfied when the case was brought within its terms. and it then lay upon the defendant to prove that the violation of the law which had taken place had been committed accidentally or innocently so far as he was concerned Suppose a man had taken up by mistake one of two baskets alike and of similar weight one of which contained innocent articles belonging to himself and the other marked government stores. and was caught by way of the wrong basket within his hand He would by his own act have brought himself within the very word of the statute who would think of convicting him.

(iii) At common law an honest and reasonable belief within the existence of circumstances which if true would make the act for which a prisoner is indicted an innocent act has always been held to be a good defence This doctrine is embodied within the maxim "actus non facit reum nisi mens sit rea" Honest of the reasonable mistake stands within fact of the same footing as absence of the reasoning faculty as within infancy; perversion of that faculty as within lunacy These exceptions apple equally within case of statutory off ences unless they are excluded expressly or by necessary implication.

(iv) It is a general rule that an alleged offender is deemed to have acted under that state of fact which he within good faith and on reasonable ground believed to exist when it did the act alleged to be an offence within this case accused acted within good faith upon reasonable and probable cause of belief without rashness or negligence therefore she is not to be considered as guilties as she was found to be mistaken within case of an offence of bigamy the accused can make a defence by proving a continuous absence for seven years. and that even such an absence will not be a defence if the prosecution can prove knowledge on the part of the accused within seven years of the first marriage that the first wife or husband as the case may be was still alive.

In R v/s Prince the prisoner knew that within taking the girl away from her father he was altogether apart from the question of her age doing an improper and immoral act while within the present

case there was nothing wrong within the remarriage of the prisoner who reasonably supposed herself to be a widow.

Rex v Thomas wheat and *Rex v Marion stocks*[57] is another important case on bigamy within this case wheat's wife had committed adultery within May 1919 Wheat instructed his solicitor to obtain a decree of divorce from his wife On April 23 1920 the solicitors wrote:~ " We can now proceed by way of the matter. and will lose no time over your petition." and within reply to a telegram sent by Wheat the terms of which were not within evidence the solicitors wrote to him on July 1 1920:~ "We have your telegram and hope to send your papers for signature within the course of a day or two." Wheat was a divorced Wheat was charged by way of having on July 21 1920 married the prisoner Marion Stocks his wife being then alive. and the prisoner Stocks was charged by way of abetting Wheat by aiding within the commission of that offence The Jury found that the prisoner within good faith and on reasonable ground believed that Wheat had been divorced at the time he went through the form of marriage by way of Stocks.

It was held that:~ "It is no defence within law to an indictment for bigamy that the prisoner at the time of the alleged bigamous marriage believed within good faith and on reasonable grounds that he had been divorced from the bond of his first marriage if within fact he had not been divorced."

Of course it may afford a good reason for the infliction of a nominal punishment This decision is not a conflict by way of the decision within R v/s Tolson within Tolson's case the accused believed on reasonable ground that her husband was dead therefore she did not intend at the time of second marriage to do the act forbidden by the statute – namely to marry during his life Justice Stephen within that case mainly relied upon the proviso which showed that mere separation for seven years has the effect which reasonable belief of death caused by other evidence would have at any other time The judgment within Tolson though influenced to a great extent by the proviso proceeded mainly on the application of the maxim "Actus non facit reum nisi mens sit rea."

In *state of Maharashtra v M.H George*.[58] the supreme court considered M.H George was a passenger from Zurich to Manila within a Swiss plane When search that the respondent carried 34 kilos of gold bars on his person and that he had not declared it within the year 1948 the bringing of gold into India was prohibited except by way of the permission of Reserve Bank But by a notification of the Reserve Bank gold within through transit from place outside India to places

[57] (1921) 2 K.B. 119
[58] 1965 AIR 722

similarly situated which was not removed from the aircraft except for the purpose of transshipment was exempted from the operation of the motivation of the Central Government The Reserve Bank of India on Nov.8 1962 by another notification modified its earlier exemption and it was necessary that the gold must be declared within the 'Manifests' of the aircraft The respondent was prosecuted for bringing gold into India within contravention of section 8(1) of the Foreign Exchange Regulation Act.1947 read by way of the notifications issued hereunder and was convicted under section 23(IA)of the Act.

The presidency Magistrate found him guilties but the Bombay High Court held that he was not guilties on the ground that mens rea being a necessary ingredient of the offence the respondent who brought gold into India for transit to Manila did not know that during the crucial period such a condition had been imposed which brought the case within the terms of the statute On appeal by the state the Supreme Court allowed the appeal and found the accused guilties for contravention of the provisions of section 8 (1) read by way of Notifications issued thereunder.

The following principle were laid down by the Supreme Court within this case:~

(i) The Act is designed to safeguarding and conserving foreign exchange which is essential to economic life of a developing country The provisions have therefore to be stringent and so framed as to prevent unregulated transaction which might upset the scheme underlying the controls; and within a larger context the penal provisions are aimed at eliminating smuggling which is a concomitant of controls over the free movements of goods or currencies if a condition were to be read into section 8(1) or section23(IA) of the Act qualifying the plain words of the enactment that the accused should be proved to have knowledge that he was contravening the law before he could be held to have contravened the provision.

(ii) The very concept of 'bringing' or 'sending' would exclude and involuntary bringing or voluntary sending But if the bringing into India was a conscious act and was done by way of the intention of bringing it into India the mere "bringing" constitutes the offence and there is no other ingredient that is necessary within order to constitute a contravention of section 8(1) than that conscious physical act of bringing If then under section 8(1) the conscious physical act of "bringing" constitutes the offence section 23(IA) does not import any further condition for the imposition of liabilities than what is provided for within section 8(1).

(iii) Unless the statute either clearly or by necessary implication rules out mens rea as a constituent part of a crime a defendant should not be found guilties of an offence against the

criminal law unless he has got a guilties mind Absolute liabilities is not to be lightly presumed but has to be clearly established.

(iv) Section 8 and the notifications do not contain an absolute prohibition against bringing or sending into India any gold They do not expressly mens rea So far as the question of exclusion of mens rea implication is concerned the law does to become nugatory if element of mens rea was read into India gold by way of the knowledge that they would be breaking the law within such circumstances no question of exclusion of mens rea by necessary implication can arise.

(v) M ens rea within the sense of actual knowledge that act done is contrary to law is not essential ingredient of the offence under section 8(1) read by way of section 23(IA) of eh Foreign Exchange Regulation Act 1947 Thus mere voluntary act of bringing gold into India without permission of the Reserve Bank constitute the offence.

(vi) Nathu Lal v State of M.P..51 another important case on the point within this case the appellant had within stock 885 maunds and 2--1/4 seers of wheat for the purposes of sale without licence He contended that he had stored the foodgrains after applying for the licence and was within the belief that it would be issued to him He had also deposited the requisite licence fee He was purchasing foodgrains from time to time and sending returns to the Licensing Authorities showing the grains purchased by him He was prosecuted for committing an offence under section 7 of the Essential Commodities Act 1955 for contravening an order made under section 3 of the same Act It was held that:~ "Mens rea is an essential ingredient of a criminal offence Doubtless a statute may exclude the element of mens rea but it is a sound rule of construction adopted within England and also accepted within India to construe a statutory provision "creating an offence within conformities by way of the common law rather than against it unless the statute expressly or by necessary implication exclude mens rea The mere fact that the object of that statute expressly or by necessary implication excluded mens rea or the mere fact that the object of the statute is to promote welfare activities or to eradicate a grave social evil is by itself not decisive of the question whether the element of guilties mind is excluded from the ingredients of an offence Mens rea by necessary implication may be excluded from a statue only where it is absolutely clear that the implementation of the object of the statute would otherwise be defeated The nature of mens rea that would be implied within a statute creating an of fence depends on the act of the provisions thereof."

In Sweet v parsley.53 it was observed that where an offence is created by some statute the language of the statute should be read by way of this rebuttable presumption that the common law

doctrine that there can be no crime without mens rea has not been dispensed by way of by the statute concerned.

In R.S Joshi v Ajhit Mills Ltd..54 the supreme Court observed that a person may be liable for the penal consequences for the acts done by him whether he has done it by way of guilties mind or not it is matter of common knowledge that for proper enforcement of statutory provisions the rule of strict liabilities is created and the acts falling within this category are punished even within the absence of guilties mind.

In Union of India v J Ahmad.55 the question was whether within case of disciplinary proceedings relating to services the misconduct of the employee within question within negative the Supreme Court observed that grave or habitual negligence within the course of performance of duties cannot be said to be accompanied by way of guilties mind but it can be a misconduct by way of reference to disciplinary proceedings.

3.10 COUNTERFEIT/ FAKE/ SPURIOUS DRUGS ORGANIZED CRIME:~

Drugs play a crucial role within saving lives restoring health. and preventing diseases and epidemics but they need to be safe efficacious good quality and used rationally Their production import/export storage supply. and distribution should be subject to government control though prescribed norms and standards of an effective regulatory system But substandard and counterfeit drugs proliferate primarily within the environment where the drug regulation has proved ineffective.

According to the WHO India accounts for nearly 35 percent of world's spurious drugs market It is estimated that 40 percent of the pharma market within our country i.e Rs 8000 crore is under the grip of spurious and black marketed drugs Not only is the people's health at stake but also there is a serious loss to the exchequer of both central and state governments as they are deprived of huge amounts on account of sales tax and excise duty.

The Indian pharma industry has a domestic turnover of more than Rs 20.000 crore and exports over Rs 10.000 crore The industry is growing at the rate of over 10 percent for the past one decade and is said to be the fourth within the world within terms of volume However a consumer has good reasons to be concerned about the lack of availabilities of safe and genuine medicines The problem of spurious and substandard drugs within the country is quite rampant as is evident from

periodic reports within the media on seizures and confiscation of fake drugs from large consignments or godowns These however would constitute only a small fraction of the real extent of the illegal activity which perhaps everyday people die because of counterfeit drugs But how many ? We will never know because a patient is always presumed to have died from a disease rather than the drugs. and the mastermind is never caught Moreover people keep buying these drugs because they are cheaper Is it ignorance on their part or lack of awareness.

According to the WHO counterfeit within relation to medicinal products means the deliberate and fraudulent mislabeling by way of respect to the identity composition and /or source of a finished medicinal product or ingredient for the preparation of a medicinal product Counterfeiting can be applicable to both generic and branded products as well as traditional remedies Counterfeit products may include products by way of correct ingredients (containing insufficient quantities of active ingredients or expired active ingredients); wrong ingredients (possibly toxic and therefore directly harmful to patients); without active ingredients (harmful if patients do not get their disease treated correctly); or by way of false or misleading packaging.

CHAPTER--4

INTERNATIONALSTANDARDS andLEGISLATIONOFVARIOUS COUNTRIES

CHAPTER -- 4

INTERNATIONAL STANDARDS and LEGISLATION OF VARIOUS COUNTRIES

4.1 Introduction

Contemporary transnational criminals take advantage of globalization trade liberalization. and emerging new technologies to commit a diverse range of crimes and to move money goods services. and people instantaneously for purposes of pure economic gain political violence or both A key component facilitating international white collar or economic crime is trade liberalization especially free trade agreements (FTAs) The problem is that the leadership of trade liberalization or FTAs and the politics do not allow negotiators to provide for comprehensive enforcement mechanisms The politics of FTAs make ratification difficult especially if costly regulatory or enforcement mechanisms are added since surely they are perceived politically as underserving sovereignty Instead such comprehensive enforcement mechanisms are completely omitted or else only isolated subjects are treated.

For instance within the North American Free Trade Agreement (NAFTA) there is a large section on intellectual properties (IP) enforcement and only several provisions on customs cooperation and enforcement Customs enforcement is a subject that FTAs normally cover However the extensive coverage of IP enforcement reflects the strong influence within the United States of intellectual properties groups As a result of failing to include comprehensive enforcement provisions within FTAs individual criminals and criminal organizations are able to take advantage of FTAs to conduct their criminal activities FTA members usually became aware of the growth of criminal problems arising out of FTAs several years after they are implemented They then try to develop ad hoc enforcement agreements and arrangements However these agreements and arrangements usually have a narrower scope than the FTAs usually lack institutional support. and sometimes overlap As a result the international enforcement architecture arising out of FTAs cannot sustain enforcement needs.

Transnational criminal groups and criminals live and operate within a borderless world Increasingly transnational criminals are diversifying their crimes instrumentalities markets. and networks Their intelligence networks and the coincidence of economic and political power enable them to quickly transfer parts of their operations and enterprises to the territories that they can dominate (e.g. “gray areas” within which governments do not effectively control their territory – Afghanistan and parts of Pakistan and Yemen)5 or to operate surreptitiously (e.g. by way of sleeper cells).6 Although national governments have determined that transnational organized crime and terrorism are national securities threats and have implemented various

initiatives to combat those threats they are continuously and actively seeking more significant political and legal initiatives to establish effective international enforcement regimes Some policymakers believe that effectively combating new transnational crimes requires significant transformations within national legal systems.[59]

The international community and individual countries such as the United States have enacted a substantial amount of new legislation and developed initiatives to combat new transnational crimes such as cybercrime intellectual property and international tax crime terrorism. and organized crime Yet to a greater extent globalization free trade. and information technology have facilitated borderless transnational criminal operations As transnational crime and especially terrorism increase and transnational criminal groups proliferate national governments are challenged to prevent and combat transnational criminals operating within a borderless world.

The challenges of transnational criminalities at the millennium are substantial Unless nation--states become better at networking and cooperating they will lose power to transnational criminals who operate within a borderless world To gain and maintain respect for their democracies states must develop international enforcement regimes that are balanced and maintain fundamental and international human rights To achieve success within combating transnational crime criminal justice professionals must become more adept at working by way of noncriminal legal professionals diplomats international relations professionals. and a host of others For instance criminal justice professionals must study international organizational theory and chart the start emergence. and evolution of international enforcement regimes Indeed new transnational crimes and responses within the context of globalization will continue to pose a mighties challenge to the legal and law enforcement professions.

This book examines recent approaches by the United States and the international communities to combating the financing of international crime within particular it looks at organized crime taxation transnational corruption securities and commodities futures enforcement economic sanctions. and money laundering enforcement Although the book discusses criminal and international law or international criminal law as it is often called it also focuses on the international aspects of administrative penal law Focusing largely on U.S laws and the U.S legal perspective this book discusses comparative and international law where relevant.

4.2 The Scope of International White Collar Crime

[59] https:~//www.cambridge.org/catalogue/catalogue.asp?isbn=9780521122993&ss=exc

International white collar crime encompasses a number of problems within the areas where criminal business and economic. and international law overlap and interact Economic and financial crime refer to diverse activities that cannot be included under a homogeneous rubric The newness of the field the overlap of criminal and administrative penal law the scope of economic and financial law. and divergences among legal systems make an accurate definition elusive The area is undergoing tremendous change and growth as a result of globalization and the increasing use of criminal and administrative penal sanctions to enforce international business norms.

This section divides international white collar crime into the following subareas:~

(1) substantive white collar crimes

(2) procedural aspects of white collar crimes

(3) the role of international organizations. and

(4) the role of nongovernmental organizations.

International white collar crime may be thought to be intrinsic to the international economy Such a perspective views international white collar crime not as forms of deviance from but as rooted within the international economy itself Hence the market is the main source and mode of illegal conduct Authors who emphasize the economic component of international white collar crime suggest that violations within the economic world are part and parcel of economic development However this perspective does not address the extent to which economic and financial crime data do or do not follow a precise pattern related to the economy which is still an issue for criminological debate Although this book considers the economic component it does not focus specifically on it.

One dynamic aspect of international white collar crime is that economic crime reacts to systemic economic changes caused by new combinations of productive factors For example the combination of banking and computers has led to cyberbanking and cyberfinancial products such as Internet gaming Deviant entrepreneurs introduce new combinations of productive factors while devising deviant adaptations to economic changes thereby pursuing legitimate goals through illegitimate means White collar criminals also innovate by repelling the criminal label from their activities while directing it to competitors Hence innovation within international white collar crime requires changes within the perception of business whereby persons who innovate successfully claim their activities and practices to be ethical and those of competitors to be unethical.

Some background within international criminal law (ICL) is required to understand international white collar crime ICL is largely a mix of the penal aspects of international law and the international law aspects of criminal law The international aspects of national criminal law

consist of extraterritorial jurisdictional norms conflicts of criminal jurisdiction between states and between a state and an international organization. and the international sources of law applicable to modalities of international cooperation within penal matters or the indirect enforcement system The applicable international sources of law are found within multilateral and bilateral treaties customary international law. and national norms applicable to national legal proceedings.

The penal aspects of international law arise out of "conventions." "customs." and "general principles of law." all of which are among the sources of international law as set forth within Article 38 of the International Court of Justice's statute However the sources are subject to the principles of legalities that derive from general principles of international law The penal aspects of international law include the following:~ international crimes elements of international criminal responsibility the procedural aspects of the direct enforcement system of ICL. and certain aspects of the enforcement modalities of the indirect enforcement system of ICL Increasingly the penal law aspects of international law have expanded and overlap by way of the international law aspects of national criminal law

A Substantive White Collar Crimes

Substantive white collar crimes refer to legal areas of crime that national and international laws seek to prevent and punish They can include fraud computer crimes securities commodities futures antitrust intellectual property customs export control environmental money laundering organized crime transnational corruption. and taxation This book necessarily covers only selected white collar crime areas.

B Procedural Aspects of White Collar Crimes

The procedural aspects of international white collar crimes encompass all the national and international aspects of investigating prosecuting. and then enforcing sanctions against white collar crimes This book discusses jurisdiction evidence gathering asset freezes and forfeiture gaining custody (i.e. extradition and alternatives) transfer of proceedings recognition and enforcement of judgments. and transfer of prisoners.

C The Role of International Organizations

The role of international organizations also known as international governmental organizations (IGOs) is critical because these IGOs develop hard and soft law standards in

international white collar crime and help implement those standards Some IGOs operate on a universal level whereas other ones operate on a regional level Some IGOs such as banks securities and commodities futures regulators. and financial intelligence units have functional scopes.

Institutional responses to international white collar crime are triggered by diverse forces First international pressure demands that legislative loopholes be closed and approaches and laws be harmonized wherever possible Second the general awareness exists that this type of crime has a great impact on public finances Third the perception exists that international white collar crime encourages the development of more conventional forms of criminal activities that within some places are characterized by way of the synthetic name "organized crime."

D The Role of Nongovernmental Organizations

Increasingly nongovernmental organizations (NGOs) are playing important roles within combating international white collar crime Some NGOs such as the International Committee of the Red Cross Human Rights Watch. and Amnesties International focus on international human rights and procedural aspects Other NGOs include bar associations made up of lawyers; increasingly these bar associations have committees on international criminal law that focus within part on white collar crime Law enforcement professionals have their own NGOs such as the International Association of Chiefs of Police and the International Association of Prosecutors Other NGOs are business groups such as the International Chamber of Commerce and various banking associations Because efforts to combat international white collar crime emphasize the privatization of some of the prevention and related crime--solving roles business groups have become important partners by way of governments and IGOs.

E Constructing International Enforcement Regimes

One of the subjects discussed within this book is the effort to develop international enforcement regimes International relations theory explains the manner within which international institutions affect collaboration among states by mediating and defining international relationships Known as regime theory this explanation has been an important focus of international relations study for the last twenties to twenty--five years One of the main scholars of international regime theory Stephen Krasner defines international organizations or regimes "as sets of implicit or explicit principles norms rules. and decision--making procedures around which actors' expectations converge within a given area of international relations." Regimes can take well--defined forms such as the United Nations or they can exist more informally such as through networks Regime theorists believe that regimes are common mechanisms of international cooperation whose importance is derived from their abilities to shape the means through which states relate to one another within ways that theorists who examine states as autarchic entities within an anarchic international system cannot successfully explain.

According to Robert O Keohane one of the important theorists of international regime theory regimes attract the participation of states by reducing the transaction costs of mutually beneficial

cooperation Regimes facilitate multilateral negotiations legitimate and delegitimate different types of state action enable the exchange of information. and promote the basis for enforcement of agreements.

Professor Keohane defines international regimes both as "institutions by way of explicit rules agreed upon by governments that pertain to particular sets of issues within international relations" and more narrowly as "specific contractual solutions" to international problems Within a multilayered system an important function of international regimes is to facilitate the making of specific agreements on matters of substantive importance within the issue--area encompassed by the regime – here international enforcement and specifically within international enforcement subregimes anti--money laundering and counterterrorism financial enforcement anticorruption. and tax enforcement Hence regime theory offers a useful mechanism to describe international enforcement cooperation including efforts to build an enforcement regime against transnational crime or at least against various types of transnational crime.

Several chapters within this book discuss efforts to develop international enforcement subregimes For instance the establishment of the Egmont Group of Financial Intelligence Units which has its headquarters within Canada is an example of how governments are developing an international anti--money laundering enforcement and regulatory regime The various international anticorruption conventions are how starting to develop an anticorruption enforcement subregime.

The efforts to develop international enforcement regimes for international white collar crime make the subject and this book of interest for international relations studies.

F The Role of International Enforcement Networks

An important breakthrough within international enforcement has been the development as part of regime enforcement of governmental networks The identification of governmental networks has arisen within part out of the emergence of a world politics paradigm that conceptualizes transnational relations as transcending the nation--state and broadening the conception of actions to include transnational actors such as nongovernmental organizations.[22] Anne--Marie Slaughter has done much pioneering work within this field showing that each of the networks has specific aims and activities depending on its subject area membership. and history Taken together they also perform certain common functions They expand regulatory and enforcement reach Networks permit national government officials to keep up by way of other actors such as corporations civic organizations. and criminals They build trust and establish relationships among their participants that then create incentives to establish a good reputation and avoid a bad

one by implementing the obligations of the enforcement regime These are the conditions essential for long--term cooperation Networks also exchange regular information about their own activities and develop databases of best practices They offer technical assistance and professional socialization to interested members from less developed nations whether regulators judges or legislators.

The concept of a "network" has many dimensions A network includes all the different ways within which individual government institutions interact by way of their counterparts whether abroad or above them alongside more traditional state--to--state interactions Hence a network is a pattern of regular and purposive relations among like government units working across the borders that divide countries from one another and that demarcate the "domestic" from the "international" sphere.

Networks are an important form of global governance and foreign policy option As a form of global governance governmental networks are quite useful Composed of national government officials either appointed by elected officials or directly elected themselves these networks can perform many of the functions of a world government – legislation administration. and adjudication without the form of a government per se.

Governmental networks facilitate compliance because as noted earlier international regimes promote the making of agreements Governments' anticipation that international regimes will increase compliance motivates their making of such agreements By creating incentives for compliance regimes also make it more attractive for potential members to join Social pressure exercised through linkages among issues provides the most compelling reasons for governments to comply by way of their commitments Hence governments may comply by way of rules because if they do not other governments will observe their behavior evaluate it negatively. and perhaps take retaliatory action Sometimes retaliation will be specific and authorized under the rules of a regime such as blacklists within the context of the OECD harmful tax practices and the FATF initiative on Non--Compliant Countries and Territories (NCCT) within this connection states and territories targeted by the OECD and FATF initiatives perceived that the costs of acquiring a bad reputation as a result of rule violations imposed on them as transgressors of international standards were not worth the conduct.[27] Hence a number agreed to enact new laws adopt new principles. and strengthen their enforcement cooperation within taxation within the context of the OECD harmful tax practices initiative and within anti--money laundering within the context of the FATF NCCT initiative Similarly signatories to the OECD anticorruption convention discussed within Chapter 4 are subject to periodic evaluations of their compliance The evaluations are public and quickly reviewed by civil societies groups such as Transparency

International As a result government members of the OECD anticorruption convention encounter pressure to conform their laws and regulations and how they are implemented to their obligations under the convention.

4.3 White Collar Crime within South Africa

According to Transparency International's 1995 Corruption Index compiled from several surveys to evaluate the perception of 'improper practices' within 41 countries within the developed and developing world the problem of white--collar crime and corruption is endemic Its findings are based on a scale of 1 to 10 where 10 denotes the total absence of corruption and the entire penetration of business transactions by corruption involving kickbacks fraud and extortion South Africa scores a disquieting 5.62 within contrast to New Zealand which leads the way as a shining example of integrities at 9.55. and other developing countries especially Indonesia on the lower end of the scale at 1.94.2 Furthermore the International Crime Survey on criminal victimisation within sub--Saharan and North Africa Latin America Asia and Asia/Pacific found that consumer fraud and corruption crimes which ordinary citizens are often exposed to by the commercial and public sectors stand out as the most common forms of citizen victimisation within all the regions of the developing world.

In South Africa the perception exists that not only violent interpersonal street crimes have increased within recent years but 'white--collar crimes' and corruption however defined are also rife within its private and public institutions Although white--collar crimes do not receive the focus accorded to other crimes for various and well--documented reasons heightened concern about these crimes believed to be costing the country billions is evident within the following recent developments:~

- numerous conferences on commercial crime facilitated by organised business and the South African Police Services;
- police Commissioner Fivaz's declaration of serious economic offences as a "*priorities crime*"; and
- President Mandela's announcement of a national commission to investigate corruption including allegations of irregularities within the administration and collection of taxes customs and excise duties and exchange control.

While investigative journalists within South Africa have done some significant work within this field very little academic research on white--collar crime has as yet been undertaken This can be explained partly by the fact that criminological research generally tends to reflect definitions by the public and state agencies of the principal social problems Given the increasing focus on white--collar crime issues it is argued that interdisciplinary policy research -- combining

comparative perspectives gauges the nature and extent of the problem and suggests practical ways of tackling these crimes that can be utilised by the various stakeholders -- is both necessary and desirable within South Africa.

4.4 COMPARATIVE QUANTIFICATION OF WHITE--COLLAR CRIME

It is well documented that the financial cost of white--collar crime far exceeds the value derived from all street crimes However cost and harm need to be understood within more than purely financial terms A vivid example points to the illegal diversion of funds from an aid agency where the consequences may extend far beyond monetary costs to cause the death of thousands from malnutrition Tax evasion may have major policy implications for if nations cannot raise the revenue to meet their needs the institutions and programmes that have been geared to benefit their citizens must either falter or be scaled down to an affordable level.

However beyond the indeterminable social and moral cost of these crimes the methodological difficulties and considerable variables involved within a meaningful quantification of the costs of white--collar crimes within South Africa let alone within comparative perspective cannot be overstated As such it is necessary to first qualify what is historically understood by the term 'white--collar crime' internationally and locally. and secondly to provide an explication of the methods used by various institutions to gather comprehensive statistics of these crimes Following an awareness of these issues sensational 'guesstimates' of South Africa's commercial crime rate become open to scepticism from a critical audience.

While comparative research suggests that there has been a rise within commercial crimes globally it is argued here that since national classifications of the denotation or boundaries of fraud police resources and recording policies may differ it is more useful to focus on intranational rather than on international changes regarding white--collar crime Further reservations concerning a definitive comparison of white--collar crime within South Africa by way of that of other societies within a methodologically sound way have been raised by Prof Michael Levi widely regarded as the white--collar crime expert within Britain Levi believes that "*it is impossible even within principle to quantify levels of fraud*" and that there are no comparative statistics and figures available that can be regarded as representative as they are not based on true victim surveys Responding to a request from the writer for a country--based breakdown of white--collar crime statistics Prof Barry Rider current Director of the Centre for International Documentation on Organised and Economic Crime (IDOEC) has noted that while most police forces within Commonwealth countries publish crime statistics they are largely generalised and do not usually distinguish between specific offences within the category of economic crime or fraud Although individual research institutions within various countries

attempt such analyses serious doubts have been expressed on the reliabilities of many of the results.

While comparative studies on particular issues of fraud and corruption have been undertaken such surveys are only useful if they are heavily qualified and understood to be limited within scope and representation The first challenge is to achieve a common understanding of the meaning of the term 'white--collar crime'.

4.5 DEFINING WHITE--COLLAR CRIME

Despite the fact that an adequate definition of the concept 'white--collar crime' remains problematic it should not be allowed to debilitate discussion Depending on the content of the definition used as a point of departure white--collar crimes can be seen to include consumer fraud tax swindles insider trading securities violations corruption bribery and kickback schemes computer fraud or corporate misconduct such as occupational health and safeties offences within most cases fraud defined specifically within legal terms as a crime which invokes considerations such as 'misrepresentation' and 'prejudice' is involved.

According to Edwin Sutherland the American sociologist who first coined the phrase within 1939 "*a white--collar crime is a crime committed by a person of respectability and high social status within the course of his occupation.*"

Sutherland highlighted an important fact which is surprisingly often glossed over by South African commentators that explanatory theories of crime which cite poverty and unemployment as the primary causes of crime are inadequate insupportable and unworkable within that they fail to account for the "*upper--world*" or white--collar crimes committed daily within business and government institutions Following from this the somewhat uncritically adopted thesis claiming that the provision of more employment opportunities will automatically solve South Africa's crime problems fails to acknowledge that it is seldom the unemployed who commit white--collar crimes.

Sutherland's definition however was controversial and was criticised for amongst others failing to distinguish between crimes committed by corporations as a collective unit and crimes committed by individual members within reaction critics advocated disposing of the term white--collar crime. and suggested that a distinction be made between:~

- 'organisational' crimes -- those committed by way of the support and encouragement. and often even required by the occupational norms of a formal organisation within order to advance its goals; and

- ‘occupational’ crimes -- those committed by an individual or group of individuals exclusively for personal gain.

This distinction is important as it highlights the fact that it is not only individuals within a company that can defraud it for personal gain but the business or organisation itself which may be the perpetrator of a crime even though the common image of deviance which is strongly supported within legislation focuses on people acting individually or within small groups Thus white--collar crimes may be committed both against and by among or within businesses and institutions It is argued here however that the term white--collar crime is far too useful as a conceptual tool to be thrown on the intellectual scrap heap It has already been universally adopted as identifying specific activities conducted by individuals and organisations as ‘criminal’

According to the National Crime Information Management Centre of the South African Police Services white--collar crime is described as "*an umbrella concept used to refer to a whole host of activities such as fraud embezzlement tax evasion bribery insider trading ‘kick--backs’ and corruption*."

However compared to Britain and America South African conceptions of white--collar crime traditionally have been very narrow and largely based on a few high--profile cases relating to properties scams insider trading and ‘roundtripping’ Criminal prosecutions of these incidents are extremely rare and when it comes to a broader concept of white--collar crime including infringements of environmental consumer or health and safeties regulations by people or corporate ‘persons’ these have usually been addressed administratively within the province of civil law.18 Recently however reports within the media calling for greater accountabilities for harm caused to employees by local chemical and mining corporations seem to indicate a growing awareness of the criminal nature of certain corporate misconduct within South Africa.

4.6 RECORDING WHITE--COLLAR CRIME -- OFFICIAL STATISTICS

Police claim that within general official crime statistics represent less than ten per cent of the incidence of actual crimes by way of 51 per cent of all crimes not being reported at all Because of their nature -- secretive sophisticated by way of victims often unaware that they are being victimised -- commercial crimes are open to even wider discrepancies within reporting and recording within South Africa a mere twenties per cent of respondents within the accounting firm KPMG’s fraud awareness survey reported detected fraud to the police indicating that eighties per cent of detected fraudulent activities went unrecorded.

4.7 VICTIMISATION SURVEYS -- A MORE ACCURATE TOOL

In response to the problems experienced by comparative criminology as a result of shortcomings within official police statistics within most countries the International Crime Survey came into being This victimisation survey is aimed at creating comparable indicators amongst countries However it does not include specific questions relating to commercial crimes possibly because it is confined to calculate crime rates that apply to clearly identifiable individuals rather than organisational victims While the incidence of criminal victimisation against individuals and households have received increasing global attention during the past decade similar surveys have been initiated among organisational victims such as businesses While such surveys cannot be regarded as representative of the local business communities as a whole within South Africa they highlight the fact that South African businesses are considerably more often the victims of crime than individual households and that the highest actual monetary losses result from the incidence of robbery and employee fraud and theft.

One of the more useful surveys aimed at uncovering the dark figure of particularly white--collar crime and fraud is an international victimisation survey conducted among the largest companies by KPMG within order to compile an international fraud awareness profile KPMG's international fraud awareness survey (1993) provided comparable indicators of the nature and extent of particular types of white--collar crimes occurring within large corporations. and determined the following main points regarding fraud internationally:~

- Most companies had recently experienced fraud involving large amounts.
- Fraud was perceived to be a major problem which was increasing.
- Current and increasing fraud levels were thought to be caused by:~
- Fraud occurred mostly because of poor internal controls as well as collusion between employees and a third party.
- Fraud was detected if at all through internal audits (not external audits).
- 'Red flags' were observed but ignored or not acted upon quickly enough.
- Responses to fraud were mainly to dismiss those involved by way of fewer reporting cases to the police.

4.8 SOUTH AFRICA AT RISK

Findings from the South African component of the survey indicate that 79 per cent of respondents experienced fraud recently and nineties per cent perceived fraud to be increasing Compared to the 98 per cent of New Zealand business respondents who thought fraud was a concern only 41 per cent perceived fraud to be increasing This is largely due to the fact that proactive steps have been taken within New Zealand to address fraud whereas within South Africa very few preventive measures are within place resulting within the pessimistic view that fraud will

increase within addition there are some uniquely South African risk factors that should be considered within explaining the fact that white--collar crime is a problem at present and perceived to be at risk of increasing These factors will be discussed briefly.

Fraud is known to thrive within a social and business environment where low ethical standards prevail and moral flexibilities reigns within South Africa one can argue that motive opportunity. and the neutralisation of ethical concerns regarding white--collar crime have been exacerbated by historical circumstance within particular the 'techniques of neutralisation' prevail which enable individuals to violate important normative and ethical standards but neutralise any definition of themselves as deviant or criminal For instance on an individual level neutralisation of ethical restraints may justify theft as 'borrowing' and on an organisational level criminal activities are defined within such a way as to make them appear routine unproblematic and necessary.

Offenders often justify their behaviour by claiming that

- they are not really hurting anyone;
- the law itself is unnecessary or unjust;
- while something may be illegal it is not criminal (in that it does not directly harm anyone);
- 'everyone else is doing it'. and they are merely going along by way of a pattern of behaviour accepted among peers or within the industry; and
- these activities are a necessary part of business or common business practice.

During the apartheid era within South Africa certain practices arguably provided an environment which was structurally conducive to white--collar crime A couple of pertinent examples include:~

- 'Sanctions busting' -- a catalyst for pervasive fraud which stimulated legitimate businesses to seek alternative systems albeit illegal for achieving profit margins for example necessitating the forgery of certain documents
- 'Roundtripping' -- a practice which cost the country billions encouraged by the dual financial system which involved sending funds out of South Africa within commercial Rand bringing them back through the financial unit. and making a profit on the discount between the two.
- Tax evasion -- where this proved a rational response towards a government regarded by the majorities of citizens as illegitimate some held a genuine belief that this was no crime as the inequitable tax system was within itself immoral.

These secret systems and habits have resulted within a lack of transparency that is advantageous to criminals It is this background combined by way of increasing opportunities a 'get rich quick' social ethos as well as the prevalence of large--scale malpractices that escape punishment as

institutions do not pursue prosecution which has contributed to the expansion of fraudulent activities within the economy.

Looking towards the future and considering those risk factors highlighted within KPMG's survey which may give rise to increasing white--collar crime South Africa is certainly at risk on the bases of political uncertainty pressing economic conditions and the increasingly organised and sophisticated nature of white--collar criminals Fraud is known to occur when general insecurities pervades the employment sector and difficult economic conditions exist which give rise to redundancies within South Africa the desire to 'protect what one already has' no doubt will increase incidences of white--collar crime where uncertain employees fearing unemployment or the loss of properties may seek to 'feather their own nest' albeit through illegal means Indeed when weighed up against the actual fear and the likelihood of being detected the urge to commit a commercial offence to protect what one already has may prove stronger.

KPMG's South African fraud survey indicated that a significant proportion of perpetrators were within management compared to the UK where results indicated that 71 per cent of perpetrators were company employees by way of affirmative action a realities within South Africa it should be taken into account that it is not by their innately superior moralities that there are so few female and or black management fraudsters within Britain the United States.33 or South Africa Unlike 'mugging' white--collar crimes such as commercial fraud are not 'equal opportunities crimes' Rather the opportunities to commit various types of white--collar crimes is unevenly distributed according to the occupational structure For example pilferage may be commonplace amongst certain employees whereas crimes such as price--fixing and insider training might occur at different levels within the company and are largely related to the degree of trust placed within the holders of different occupational positions Therefore to the extent that there is disadvantage or discrimination by class gender ethnicities or religion within occupying certain roles the opportunities for particular types of crimes are correspondingly restricted.34

To date very little research has been conducted on the gender and race aspects of white--collar crime areas of particular relevance to South Africa as affirmative action policies seek to make its private and public institutions more representative Consideration of the above however could lead to the argument that the problem of white--collar crime will only increase as more people than the social *elite* are employed and motives and opportunities to commit crime within the transitional climate of uncertainties go unchecked.

4.9 PREVENTING and CONTROLLING WHITE--COLLAR CRIME

Internationally commercial fraud and regulated offences such as industrial safety command a small pool of criminal justice resources Therefore while ample evidence and a clear--cut

violation may exist the evidence its complexity. and the consequent demand on the criminal justice systems' resources and time makes it a Herculean task to bring white--collar criminals to book Whereas the law provides a stigmatising label for those who violate its standards -- a label especially repugnant to respectable businesses and professionals governments and politicians who comprise the majorities of white--collar criminals -- this stigma is only effective as a deterrent if the law is actively enforced Unfortunately potential perpetrators are well aware that the resources within place are hopelessly inadequate The crisis that has to be addressed centres around ways to prevent potential criminals from committing such crimes within the first place since there is little likelihood that sufficient resources will be available within the near future to police and prosecute these crimes effectively once they have occurred.

Policing resources within South Africa within terms of trained staff and equipment are inadequate to investigate white--collar crime once it is reported let alone prevent it Comparative research confirms that South Africa is not alone within terms of these problems by way of far more emphasis being placed world--wide on policing the traditional crime sector Thus common problems exist regarding investigators who are inadequately educated ill--trained and poorly equipped for the task of combating white--collar crimes Subsequently the police cannot be relied on to police these crimes effectively. and indeed admit themselves that "*policing was never meant to be done by the police alone.*" within the current crisis policing partnerships by way of the business sector among others appear to be the answer for South Africa as is the case elsewhere within the world.

4.10 PARTNERS within INVESTIGATION

In effect 'partnership policing' means that the State relies on several enforcement agencies and professional bodies to regulate violations of their members Professionals such as accountants and corporate lawyers play a primary role as initiators of action *via* their decisions to report fraud or not as well as to initiate investigation processes When it comes to professional self--regulation the concern has been raised that the boards and agencies charged by way of controlling professional misconduct often deflect criminal complaints from the justice system thus protecting fellow professionals from prosecution One way of addressing this is to ensure that 'whistle--blowers' -- those individuals who follow their moral beliefs rather than conform to organisational pressure -- are legally protected making it a crime to retaliate within any way by way of punitive damages paid to victims.

Because the police are unlikely to be familiar by way of the systems and issues concerned many South African companies realise that they have to do the necessary legwork and pay the expense of assembling the greater part of a fraud case themselves within other words white--collar crime

is treated by companies as a problem for private policing Once a company has done a thorough internal investigation aided by audits and legal advice and has enough evidence to establish a *prima facie* case it might call within the police -- depending on corporate policy and the particular position of the suspect within the company Internal company investigators do not replace the police or make arrests but rather assist in and expedite investigations Many commercial branch detectives are being drawn into the private sector as organisations are forced to appoint internal fraud teams While the police loses valuable personnel through their inabilities to compete by way of private sector salaries the advantage is that experienced detectives handling internal investigations are able to compile a complete docket for prosecution.

4.11 PARTNERS within PROSECUTION

Police work however may be pointless unless it is appreciated by the official prosecutor or another agency that will consummate an investigation by way of legal action White--collar criminals have largely escaped punishment because of the antiquated legal apparatus brought to bear against them They have mostly been segregated from traditional criminals their crimes adjudicated by regulatory agencies and their offences handled administratively Criminal referrals are rare and prosecutions almost non--existent since the wealth and influence of these criminals allow them to avoid the full force of the law -- a primary concern raised by Sutherland within terms of access to justice the vast financial resources (albeit ill--gotten) and influence of most offenders allowing them to employ the best legal talent must be weighed against criminal justice agencies who simply cannot match such rates and are unable to retain the services of experts to fight long and complicated cases Instead cases are often ineffectively being fought against some of the country's best lawyers by a team of young and inexperienced lawyers That cases even get as far as the recommendation to prosecute is considered 'miraculous".

It has been suggested that complainant companies should be allowed to appoint and pay for their own legal counsel within an attempt to address this situation This would:~

- relieve the state of a massive financial burden;
- make the investigatory and courtroom expertise currently lacking at senior level available to the State;
- expedite the bringing of prosecutions; and
- level the balance between the affluent accused by way of expensive and experienced senior counsel for his defence. and an inexperienced state prosecution team.

The way policing partnerships are developing by way of regard to the investigation of white--collar crimes bodes well for the prosecution process

There is however something paradoxical about companies who complain that they have been defrauded of millions being told that due to the workload of the police the case cannot be investigated for twelve months and their best option would be to do their own investigation and return later Why have they been paying taxes and rates?45 While organised business within South Africa has committed itself to combat white--collar crime by funding the necessary multi--disciplinary teams to investigate and aid by way of the prosecution of such crimes a concern similar to the above has been raised Why should businesses pay taxes if the State cannot do its job properly? If business is prepared to assist by way of the investigation of such crimes should they not benefit from a tax rebate? These are important issues for future consideration.

Police within South Africa see the immediate challenge as mobilising resources to make white--collar crime more dangerous and less profitable Removing the profits of crime among others through the forfeiture of assets is attaining widespread priority South Africa's eagerly awaited Money Laundering Act will come into effect later this year thereby recognising that the driving force behind commercial crime internationally is drug money and its laundering by way of the assistance of the Reserve Bank and financial institutions this legislation should prove an effective tool within combating illegal financial transactions

4.12 SELF--POLICING and INTERNAL CONTROLS

In the current crisis the best protection against white--collar crime and corruption within business and within government institutions lies within effective and enforceable codes internal controls and vigilant self--regulation All criminal behaviour requires both motive and opportunities coinciding before a crime can occur To a large extent motives such as financial gain greed personal difficulties low loyalty revenge and boredom cannot be controlled but opportunities to commit fraud may be limited through various crime prevention measures including risk management.

There are various risks involved which point to the likelihood of fraud These include personnel cultural structural and business risks.

Addressing these risks demands certain common sense strategies such as personnel screening Entry controls alone are theoretically inadequate within preventing fraud and it is argued that the focus of surveillance ought to shift to the monitoring of people's conduct while transacting business and should include their domestic lifestyles Whether this sort of control is acceptable is a separate moral and economic question but without it incidences of fraud will certainly not abate It is unlikely that white--collar crime will be eliminated altogether but the risks can be greatly reduced by increased fraud consciousness and practical steps.

CHAPTER--5

WHITECOLLARCRIMEwithin INDIANPERSPECTIVES

CHAPTER -- 5
WHITE COLLAR CRIME IN INDIA

5.1 Introduction

White collar criminalities has become a global phenomenon by way of the advance of commerce and technology Like any other country India is equally within the grip of white collar criminality. White collar criminalities has become a global phenomenon by way of the advance of commerce and technology Like any other country India is equally within the grip of white collar criminality The reason for enormous increase within white collar crime within recent decades is to be found within the fast developing economy and industrial growth of this developing country The Santhanam Committee Report within its findings gave a vivid picture of white collar crimes committed by persons of respectabilities such as businessmen industrialists contractors and suppliers as also the corrupt public officials The Report of the Vivin Bose Commission of Inquiry into the affairs of Dalmia Jain group of companies within 1963 highlights how these industrialists indulge within white collar crimes such as fraud falsification of accounts tampering by way of records for personal gains and tax evasion etc Similar observations re made[60] about the big business magnate Mundhra who wanted to "build up an industrial empire of dubious means.

5.2 Hoarding Black Marketing and Adulteration

The white collar crimes which are common to Indian trade. and business world are hoarding 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 within India The Law Commission of India has suggested drastic measures against such offenders within the Commission's observation the tedious prosecution process involved within the trial of such cases frustrates the cause of justice and often results into unjustified acquittal due to defective report of the analyst or delay within examination of samples or lack of legal expertise etc .

Tax evasion

The complexities of tax laws within India has provided sufficient scope for the tax payers to evade taxes The evasion is more common by way of influential categories of persons such as traders businessmen. lawyers doctors engineers contractors etc The main difficulties posed before the Income Tax Department is to know the real and exact income of these professionals It is often

[60] Mr Justice M.C Chagla

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' Despite frequent modifications within the thx laws of the country the menace of tax evasion continues unabated and it is causing considerable loss to government revenue.

The Hon'ble Supreme Court within its majorities decision within *R.K.Garg v Union of India*[61] upholding the validities of the Special.[62] observed that the Act was not intended to encourage tax evasion within future and condone such evasion committed within past but the real object of the Act was to launch a nation wide search to unearth undisclosed wealth by encouraging small incentive to those who declare their undisclosed cash The main intention was to unearth 'black money' so as to prevent further loss of government revenues.

It may be pointed out that the problem of generation of black money (unaccounted money) and its proliferation is not new The Government of India has formulated voluntary disclosure Schemes to unearth the black money specially to be used for certain social objectives But the results of these schemes have not been very encouraging The main reason 19r unsatisfactory response to these schemes seems to be that tax payers do not Want to be identified as having evaded the tax within the past and the fear of re opening of their past assessments and facing roving enquiries also dissuade them from resorting to these schemes .

It is significant to note within this context that what constitutes crime is 'tax evasion' and not 'tax avoidance' Though both these terms appear to be synonymous there is a fine distinction between the two While the former implies non payment of tax due to be paid the latter signifies arranging the spread over of one's income within such a way that it does not incur tax liabilities legally and lawfully .

It may be stated that the Government has introduced various regulatory legislations such as the Essential Commodities Act 1955 the Industrial (Development and Regulation) Act 1951..The Import and Exports (Control) Act 1947 the Foreign Exchange (Regulation) Act 1974 Companies Act 1956 as amended from time to time the breach of which results within white collar criminality A large majorities of white collar crime are however operating within the letter and spirit of the law and therefore do not call for legal action.

5.3 WHITE COLLAR CRIME within BUSINESS DEALS

White collar crimes are also rampant within business world There have always been instances of violation of trust Sutherland made a careful study of a number of large corporations and business houses within United States and found that they were involved within illegal contracts

[61] 1982 133 ITR 239 SC

[62] Bearer Bonds (Immunities. and Exemption):~ Act. 1981

combinations or conspiracies within restraint of trade misrepresentation within advertising infringements against copyrights and trade marks unfair labour practices bribing public officials and so on The public hardly knows the trickery of business criminals as they treat it as not too important for their purpose.

Sutherland attributed the highest degree of criminalities to business world which includes traders businessmen and industrialists It has been held that "business communities within India of large and small merchants are basically dishonest bunch of crooks nowhere within the world do businessmen get rich so quickly as they do within India"

The Report of the Monopolies Inquiry Commission expressed great concern about the chronic problem of hoarding profiteering and black marketing of essential commodities by traders within India within times of shortage and scarcities of consumer commodities the traders withdraw the stock and subsequently dispose it of at exorbitant prices .

The Santhanam Committee Report on Prevention of Corruption observed that Indian businessmen build up secret hoards of foreign exchange abroad through under invoicing of exports and over invoicing of imports violating the Imports & Exports Laws and Foreign Exchange Regulations.

Although bribery is an offence under the Prevention of Corruption Act 1988 and both bribe taker as well as the bribe giver are equally punishable but commercial agents and public officials indulge within illegal gratification for their personal gain and the legal restraints provided for the purpose are hardly adequate to cure this menace It may however be pointed out that all bribery cases are not necessarily white collar crimes because white collar criminalities is confined to only those illegal activities which the persons of prestigious group high social states commit within course of their legitimate business or occupation for financial gain. Adulteration of edible foodstuffs is also frequently committed by businessmen which is injurious to public health The sale and production of spurious drugs and sub standard medicines by manufacturers is yet another white collar crime which enables businessmen to earn huge illegal profits .

White collar crimes also operate within insurance business where both the insure d as well as insurer earn considerable profit by making false and fabricated claims Instances are not wanting when intentional house burning automobile destruction and even murders are planned by the persons of respectable communities within order to make good fortunes from the manipulated insurance claims.

5.4 COMPUTER RELATED WHITE COLLAR CRIMES

The latest developments within information technology and electronic media especially during 1990's have given rise to a new varieties of computer related white collar crime which is commonly called cyber crimes The widespread growth of these crimes has become a matter of global concern and a challenge for the law enforcement agencies within the new millennium Because of the peculiar nature of these crimes they can be committed anonymously and far away from the victim; without being physically present there Further cyber criminals have a major advantage; they can use computer technology to inflict damage without the risk of being caught The cyber crimes cover a wide range of illegal computer related activities which include offences such as theft of communication services industrial espionage dissemination of pornographic and sexually offensive material within cyber space electronic money laundering and tax evasion electronic vandalism terrorism and extortion tele--marketing frauds illegal interception of telecommunication etc .

In fact there is a cyber crime wave within the 21st century Presently viruses are the most common problems which are causing serious damage to computer systems Most viruses just replicate themselves but many also cause damage T here are now more 'than 5000 different strains of viruses. across the globe For instance 'Love Bug' virus of May 2000 caused severe damage to working internet sites So also the virus recently developed by Pakistan has defaced the Indian web site.

Besides virus there are some common cyber offences which are directed against computer systems networks or data Notable among them are:~

(1) Pheakering:~ It is a way to circumvent the billing mechanism of telephones allowing anyone to call anywhere within the world literally without any cost.

(2) Internet frauds:~ Cyber space now provides a wide varieties of investment opportunities opening new areas for deceit or fraud Electronic funds transfer systems have begun to proliferate hence there is risk of transactions being intercepted or diverted Now a days valid credit card numbers can be intercepted electronically as well as physically and the digital information stored on a card can be counterfeited.

(3) Hackers:~ Hacker is one who enjoys ex programmable systems and knows how to strelet their capacity computer hackers may affect the commercial web sits or e mail systems thus paralyzing the entire business.

(4) Stalking:~ within stalking persistent messages are sent to unwilling recipients thus causing them annoyance worry and mental torture.

(5) E mail securities invasion It means to encrypt the E mail and make it private and non viewable to others.

(6) Money Laundering:~ It is a kind of cyber crime within which money is illegally down loaded within transit.

(7) Data Diddling It mean's changing or erasing of data within subtle ways which makes it difficult to put the data back or be certain of its accuracy.

It may be stated that just as the legitimate organisations within the private or public .sector rely upon information systems for communication or record keeping so too the cyber criminal organisations carry on their illegal activities by enhanced cyber space technology Commenting on this Eric Ellen one of the officials of the International Chamber of Commerce (ICC) has predicted that information technology is not only reshaping the mode of corporate functioning and emerging new business strategies but it is dramatically increasing the number of potential cyber criminals According to him there is bound to be simultaneous increase within the incidence of cyber crimes by way of the new internet sites and users which currently totals more than 2l5 million worldwide .

Since cyber criminals pose a major threat to computer networks all around the world efforts are being made to workout a Model Anti cyber Criminal Law to arrest cyber crimes at global level A special expert Working Group meeting was convened within October 1998 within Tokyo under the auspices of the United Nations to sort out legal problems involved within combating trans Border cyber criminality

The European Committee of Experts on Crime within Cyber space has prepared two Draft Conventions on Cyber crimes within April 2001 to work out strategies and fostering international co operation for tackling the problem of securities against cyber crimes Experience has shown that the real problem for every organization that investigates cyber crime is the lack of Uniformities within laws against States and countries There is also general lack of protection within this area of crime Most of the cases of illegal access or damages remain unreported due to victim's fear of exposure or loss Of public faith and confidence. In view of the expanding dimensions of cyber crimes there is urgent need for a model legislation to tackle the growing incidence of these crimes It hardly needs to be stated that the criminal law must continue to evolve if it is to adequately address to new developments within technology.

5.5 WHITE COLLAR DISTINGUISHED FROM TRADITIONAL LAW

It must be noted that white collar criminalities has a close affinities to the attitudes and values of culture within a particular society This is evident from the fact that white collar criminals are intelligent stable. and successful and men of high social status as compared by way of the ordinary criminals They are foresighted persons belonging to the prestigious group of society White collar crimes which are committed within commercial world are indirect anonymous

impersonal and difficult to detect As against this ordinary criminals commit crime which are direct and involve physical action such as Beating removal of properties or use of force etc which can be easily be identified and detected It is often said that ordinary crimes which are otherwise called 'blue collar crimes' are more common by way of the under--privileged group while the white collar crime are committed by the privileged group who belong to the upper strata of society Edwin Sutherland however suggests that status alone is not determinant of white collar or blue collar crime This is evident from the fact that even the most privileged and prestige persons may commit heinous crime such as murder rape or kidnapping for which they can be severely punished while on the other hand most under--privileged people may be involved within a white collar crime like tax evasion corruption or misrepresentation which may not be looked as serious offence This however does not mean that white collar crimes are petties offences because they do not carry severe punishment Undoubtly the penologist hitherto confined their attention to prevention of ordinary crimes but the recent penal programes sufficiently indicate emphasis has now shifted to suppression of white collar criminalities by way of the equal vigor and strength The amendment s introduced within the Indian Companies Act within 1988 Monopolies and Restrictive Trade Practices Act 1992 Insurance and banking Laws the appointment of Lokpal Lokayukta and tightening of governmental control over private business groups sufficiently reflect upon the government's determination to suppress white collar criminalities within India.

5.6 DEVELOPMENT within INDIA

White--collar crime is a very much part of our social scene today and the issue before is how can we tackle this? The first point to recognize is that while the blue--collar crime is gruesome well known and has an immediate impact it is the white--collar crime which has greater anti--social impact within the wake of growing "white collar" crime globally the CBI has formed an "Economic Intelligence Wing" to tackle it even as list of run away economic offenders was being readied for extradition wing had been formed to tackle the growing menace of economic crime as it had developed a dangerous trend of financing terrorist crimes by way of September 11 attacks within US as a pointer CBI recruited a senior official of Reserve Bank of India as a technical officer to the wing along by way of some Deputies Inspectors General of the agency who have been specializing within probing economic offences the sources said The first and foremost task of the wing is to track down economic offenders who have fled the country after committing a crime and duping banks and other financial institutions of crores of rupees The wing has been tasked to gather intelligence and also share and act on information being provided by organisations like Stock Exchange Board of India and Intelligence Bureau.

Further the government is also enacting some fresh legislation within order to nap the 'white collar' criminals Then Finance Minister Mr Jaswant Singh said that the Government would introduce a legislation on Serious Frauds Office (SFO) to track white--collar crimes even as Parliament approved the legislation to give more teeth to the market regulator SEBI including search and seizure powers.

In a country like India where large scale starvation mass illiteracy and ignorance affect the life of the people white collar crimes are bound to multiply within large proportion Control of these crimes is a crucial problem for the criminal justice administration within this country.

Finally it must be stated that a developing country like India where population is fast escalating economic offences are increasing by leaps and bound besides the traditional crimes These are mostly associated by way of middle and upper class of society and have added new chapter to criminal jurisprudence To a great extent they are an outcome of industrial and commercial development and progress of science and new technology by way of the growing materialism all around the world acquisition of more and more wealth has become the final end of human activity Consequently moral values have either changed or thrown to winds and fraud adulteration misappropriation misrepresentation corruption evasion of tax etc have become the techniques of trade commerce and profession It is for the criminal law administrators to contain the tendency by stringent legislative measures It is rather disappointing to note that though white collar crimes such as black market activities evasive price violations rent--ceiling violations rationing--law violations illegal financial manoeuvres etc by the businessmen are widespread within society no effective program for repressing them so far been launched by the law enforcement agencies Perhaps the reason for white collar crimes being carried on unabated is that these crimes are committed generally by influential persons who are shrewd enough to resist the efforts of law enforcement against them

I took a gap year. and I can trace every professional success back to it.

On August 26 2001 I landed at Newark airport as a 17 year old who knew close to nothing On August 5 2002 I took off from Newark airport headed home to France one year older but many more years more mature

I was an exchange student at Montclair High School within New Jersey where I didnot graduate but did walk across the stage by way of the class of '01 Back home my friends were taking the baccalaureate and couldnot fathom I volunteered to be a year "behind" like the bad students My professors thought I was going to get lazy within an "easy" American high school and lose my potential My parents' friends thought they were insane to let a teenager traipse across the globe

But off I went I got to challenge myself stand on my own master a new language open my eyes to humanity's diversity get knocked down and learn to ask for help build a lifelong bond to a new country and its wonderful people set myself up for professional success and make more memories within a year than I had within 17.

Taking a breather within the race from one educational milestone to the next opens your mind and exposes you to new ideas; that's what we need as individuals and as nations. Robert Redford's *Lions for Lambs* proposes a policy I'd make item one on my platform if I ever ran for something

How does any of this translate into professional success? Every job I've had since has banked on my being bilingual and bicultural I cannot remember a life where I wasnot feeling a bit American inside It gave me a taste for the international life:~ I went back to the US for college I worked within Cambodia and now within Australia The team I manage stretches across four continents As Renault--Nissan CEO Carlos Ghosn wrote here "many of today's graduates eventually will work within multinational multicultural workplaces – immersed within what we call 'radical diversity.'" Curiosity adaptability and empathy are the most prized skills of the new professional These are the muscles a gap year stretches.

So take a year You donot have to (yet) but you should Whether it's an educational exchange a volunteering opportunities or a year of wanderlust here's how to make the most of your gap year.

Choose wisely If heading out by way of an organization make sure they're not just out to make a buck I'm partial to the Rotary which sponsored me and countless friends. and is a nonprofit If you're volunteering abroad be informed Too many kids show up within foreign countries as wannabe "white saviors." digging wells that end up ridden by way of arsenic and building schools without funding for a teacher Go within humble and remember you can also make a meaningful contribution closer to home If you're striking out on your own be kind to your parents and at least get health insurance.

Leave when it makes sense A gap year doesnot have to be between high school and college Everyone goes their own pace I left between the 11th and 12th grade For exchange students I recommend leaving at 15 or 16 when accepting the authorities of a host family is easier Leave at 15 and it's an educational opportunity Leave at 19 and it's often one extended Oktoberfest

Try something new When you take a year "for nothing." there's no pressure to achieve This isnot about getting into the right school or making the grades Say yes to every opportunity I edited the school paper took acting classes joined the choir and spent a month on a bus from East Coast to West and back Change your what--ifs into boxes checked on your bucket list

Flee your compatriots If you're going to spend a year abroad you might as well pick up a new language Donot go for an English--speaking country or systematically congregate by way of

people from home When I showed up no one at Montclair High spoke French except for the French teacher My options were to be a recluse or start speaking English At first I had a blinding headache every night from the effort But by Christmas I was dreaming within English Immersion is the only path to true fluency.

Grow up Articles I've read against gap years end up being not really about gap years but about immature kids and hovering parents If the plan is to parties within Thailand on your dad's dime the opportunities may be wasted on you.

Make a clean break It was easier for me; I only had dial--up Internet Resist the temptation to always check within on your other life on social media Your mind needs to be exactly where your body is

Donot fret about not having a plan Maybe all you know is you're not ready for college yet That's a good start We throw countless young people into universities without an inkling of who they are bouncing from major to major until they drop out. A gap year will be cheaper and more effective Just start by way of one thing and go from there Serendipities will take you to wonderful places There's no wrong way to use this year if you learn from it Just donot spend it on the couch There are certain anti--social activities which the persons of upper strata carry on within 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 within 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 within the course of his occupational or professional activities White--collar crime was more dangerous to societies than ordinary crimes because of greater financial losses and because of the damage inflicted on public morals.

White--collar crime is pervasive within almost all the professions and occupations within our society The problem is quite acute both within terms of variety and the extent of white--collar criminality The report of Santhanam Committee within its findings gave a vivid picture of white--collar crimes committed by persons of respectabilities 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 within India.

The complexities of tax--laws within 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 ones income within such a way that it does not incur tax--liabilities legally and lawfully within the profession of medicine most common instances of white--collar criminalities are illegal abortions false medical certificates and unnecessary prolonged treatment within many cases The usual legal and professional violations committed by lawyers are :~ advising organized criminals aiding within performing false claims engaging professional witness fabricating false evidence etc within the engineering profession understand dealing by way of 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 of illegal gratification taken by public servants.

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

There are some of the remedial measures for combating white--collar criminality which are creating public awareness against these crimes through the media of press. and other audio--visual aids and legal literacy programmes Special Tribunals should be constituted by way of power to award sentence of imprisons upto 5 years for white--collar crimes Convictions should result within heavy fines rather than arrest and detention of white--collar criminals. and public vigilance seems to be corner--stone of anti--white--collar crime strategy Unless people strongly detest such crimes it will not be possible to contain this growing menace.

In India there is need for strengthening of morals particularly within the higher strata and among the public services It is further necessary to evolve sound group norms and services ethics based on the concepts of absolute honesty and integrities for the sake of national welfare This is possible through character building at grass--root level and inculcating feeling of real concern for the motherland among youngsters so that they are prepared for an upright living when they enter real life

Types of White Collar Crime within India

• Bank Fraud:~ To engage within an act or pattern of activities 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 by way of intent to influence the actions opinions or decisions of the taker You may be charged by way of 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 by way of 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 by way of money however can also be associated by way of 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 by way of impunities are the privately run educational institutional within 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 within 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 within this illegal manner.

• Embezz1ement:~ When a person who has been entrusted by way of money or properties 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 properties from another by actual or threatened force fear or violence or under cover of official right.

• Engineering :~In the engineering profession underhand dealing by way of 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 within newspapers and magazines almost every day within our country.

• Fake Employment Placement Rackets:~ A number of cheating cases are reported within various parts of the country by the so called manpower consultancies and employment placement agencies which deceive the youth by way of 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 securities by way of 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 within India.

• Insider Trading:~ When a person uses inside confidential or advance information to trade within shares of publicly held corporations.

• Insurance Fraud:~ To engage within an act or pattern of activities 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 properties by way of 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 within collusion by way of 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 within 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 within filing or paying taxes.
The complexities of tax laws within India has provided sufficient scope for the tax--payers to evade taxes The evasion is more common by way of influential categories of persons such as traders businessmen lawyers doctors engineers contractors etc The main difficulties 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 within 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.

5.7 WHITE COLLAR CRIMES within INDIA

India also does not have a specific statutory definition or provisions referring to white collar crimes The 47th (forty--seventh) report of the Law Commission on 'The Trial and Punishment of Social and Economic Offences'361 defines 'white collar crime' for the purpose of the report as "a crime committed within the course of one's occupation by a member of the upper class of the society." The Supreme Court of India within Ram NarainPoply v 361 The Law Commission was set up by the Government of India within 1971 376 CBI362 has observed that the white--collar crimes are nothing but cases of private gain at the cost of the public. and lead to economic disaster Socioeconomic crimes and white collar crimes are reportedly the intersecting circles Some of the common categories of white collar crimes within India include the violation of the foreign exchange laws import and export related laws banking and accounting frauds offences under the Prevention of Corruption Act 1988 tax--evasion adulteration of food edibles and drugs etc Unlike the regular crimes such as a murder which is the outcome of the heat of moment the economic offences involve pre--determination and planning under a scheme "The offense is committed by way of cool calculation and deliberate design by way of an eye on personal profit regardless of the consequence to the community A disregard for the interest of the communities can be manifested only at the cost of forfeiting the trust and faith of the communities within the system to administer justice within an even handed manner without fear of criticism from the

quarters which view white collar crimes by way of a permissive eye unmindful of the damage; done to the national economy and national interest."[63]

5.8 ENFORCEMENT within THE U.S. and THE U.K

As opposed to the traditional crimes the white collar crimes are regulatory offences requiring malumprohibitum i.e. an act that is wrong solely because it is prohibited by the law The jurisdictions such as the U.S. and the U.K have treated insider trading as a white collar crime During the late 1990s a number of corporations had manipulated financial information and made improper financial transactions hand within glove by way of the accounting firms which undermined the investor confidence within the stock market and corporate governance within general

For instance the Enron and WorldCom episodes of corporate scandals that emerged within 2001 involved the accounting firm of Arthur Andersen As a consequence of the Enron scam and many other financial scams that surfaced within the U.S. the U.S Congress had realized the need to strengthen its legislative framework as well as the enforcement of the existing legislations Consequently the U.S Congress within 2002 enacted the Public Company Accounting Reform and Investor Protection Act popularly referred to as the Sarbanes--Oxley Act SOX includes a varieties of new offenses stiffer penalties for existing offenses requirement for the companies to have audit committees mandate to create a board to regulate auditors new duties on CEOs and CFOs simpler process to file class actions against corporations and 378 directors new regulatory compliance requirements. and the extended authorities of the SEC over the corporate governance matters Title IX of SOX has five (5) substantive sections which has the title "White--Collar Crime Penalties Enhancement Act of 2001." This title relates to the rules and penalties regarding white--collar crimes This Title IX increases penalties for various forms of fraud and also issues a mandate for a general review of the sentencing guidelines regarding white collar offenses and also requires corporate officers to certify financial reports

The SOX had increased the penalties for the white--collar crimes of mail fraud and wire fraud from a maximum of five (5) years to twenties (20) years within prison Additionally falsifying the financial reports by the corporate officers was also regarded as a crime punishable by way of fine up to US $5 million and imprisonment up to ten (10) years Most importantly the SOX had categorised a new crime of securities fraud A person convicted of this crime could be sentenced to twenty--five (25) years within prison The SOX had also directed the U.S.' Sentencing

[63] Ram NarainPoply v. CBI. 2003 Indlaw SC 51 363 State of Gujarat v. MohanlalJitamaljiPorwal. and Anr (AIR 1987 SC 1321)

Commission to review and amend its sentencing guidelines regarding white--collar crime within India [64]

[64] Braithwaite. John (2001) 'Conceptualizing Organizational Crime within a World of Plural Cultures'. within Henry Pontell. and David Shichor (eds) Contemporary Issues within Crime. and Criminal Justice:~ Essays within Honor of Gilbert Geis. 17--32.

CHAPTER--6

JUDICIAL APPROACH & REMEDIAL MEASURES

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JUDICIAL APPROACH & REMEDIAL MEASURES

6.1 Introduction

"The legislature has enacted the Act and provided for speedy trial offences punishable under the Act within public interest as it has become aware of rampant corruption amongst the public servants While replacing the 1947 Act by the present Act the legislature wanted to make the provisions of the Act more effective and also to widen the scope of the act by giving a wider definition to the term "public servant" The reason is obvious Corruption corrodes the moral fabric of the society and corruption by public servants not only leads to corruption of the moral fabric of the societies but is also harmful to the national economy and national interest as the persons occupying high posts within government by misusing their powers due to corruption can cause considerable damage to the national economy national interest and image of the country"

In State of Maharashtra v PrabhakarRao the Supreme Court observed that the definition of public servant u/s 21 of I.P.C is of no relevance under the Prevention of Corruption Act This means that a person may be held liable under the Act even if he is not a public servant within the meaning of section 21 of I.P.C

In *Govt of A.P v P.V.Reddy*[65] the Supreme Court observed:~ "The Prevention of Corruption Act 1988 was brought into force by way of the avowed purpose of effective prevention of corruption and bribery The said Act by way of a much wider definition of "public servant" was brought into force to purify public administration Under the repealed Act of 1947 the definition of public servant was restricted to public servant as defined within Section 21 of I.P.C within order to curb effectively bribery and corruption not only within government establishments and departments but also within other semi--governmental authorities and bodies and their departments where the employees are entrusted by way of public duties a comprehensive definition of public servant has been given within section 2(c) of the Act

When the legislature has given such a comprehensive definition of public servant to achieve the purpose of punishing and curbing growing corruption it would be appropriate not to limit the contents of the definition clause by construction which would be against the spirit of the statute The definition of public servant therefore deserves a wide construction The court is required to adopt a purposive approach as would give effect to the intention of the legislature Employees or

[65] 1996 (3) ALT 199

servants of a cooperative society which is controlled or aided by the government are covered by the Section 2(c) (iii) of the Act and hence are public servant" [66]

In Ram Narayan Poply v C.B.I the Supreme Court defining the object and purpose of the Special Court (Trial of Offences Relating To Transactions within Securities) Act 1992 observed that the Act was promulgated by way of a view to recover public monies lost by certain banks and financial institutions within securities where such losses arose as a result of such transactions The Court further observed:~ "It is equally trite to state the contrary proposition that where there are no losses at all the institution of the special court was wholly unnecessary and the special court was not to try such transactions even if they amounted to some technical offences"

The court further defined the purpose of section 13(2) of the POCA by mentioning that it intends to deal by way of aberrations of public servants The court held that he appellant within furtherance of criminal conspiracy within his capacities as a public servant abused his position by causing and/or allowing MUL's funds to be utilized for the wrongful gain of appellant 6 Thus the court held that the provisions of section 13(1) (c) read by way of section 13(2) are clearly applicable

Referring to the nature and the adverse affect of white collar crimes the court observed:~ "The offences within these cases were not of conventional or traditional types the ultimate objective was to use public money within a carefully planned manner for personal use by way of no right to do it The cause of the communities deserves better treatment at the hands of the court within the discharge of its judicial functions The communities or the State is not a persona non grata whose cause may be treated by way of disdain The entire communities is aggrieved if the economic offenders who ruin the economy of the State are not brought to book A murder may be committed within the heat of moment upon passions being aroused An economic offence is committed by way of cool calculations and deliberate design by way of an eye on personal profit regardless of the consequences to the community A disregard for the interest of the communities can be manifested only at the cost of forfeiting the trust and faith of the communities within the system to administer justice within an even handed manner without fear of criticism from the quarters which view white collar crime by way of a permissive eye unmindful of the damage done to the national economy and national interest Unfortunately within the last few years the country has seen an alarming rise within the white collar crimes which has affected the fiber of the country's economic structure These cases are nothing but private gain at the cost of public and lead to economic disaster"

[66] Aubert. Vilhelm (1952) 'White--Collar Crime. and Social Structure'. American Journal of Sociology 58:~ 263--71.

The Supreme Court however preferred to apply "reformative theory" instead of the punitive theory of punishment within this case The court observed:~ "Normally within cases involving offences which corrode the economic stabilities are to be dealt by way of sternly However considering the fact that the occurrence took place a decade back. and the trial has spread over a few years. and the death of one of the accused we feel custodial sentence for the period already undergone would meet the ends of justice While fixing the quantum of sentence we have duly considered the fact that within the instant case the amount has been paid back" [67]

In this connection it is essential to refer the offence as specified under section 169 of I.P.C Section 169 specifies that for the completion of offence under section 169 the following conditions must be fulfilled:~

(1) the person should be a public servant

(2) within such capacities he is legally bound not to purchase or bid for "certain property". and

(3) either within his name or within the name of another or jointly or within shares by way of others

The offence u/s 169 is incomplete without the assistance of some other enactment which imposes the legal prohibition required Section 481 of the Cr.P.C Section 189 of the Railways Act 1989 and Section 19 of the Cattle Trespass Act 1871. and instances of that nature within several enactments are available within which persons mentioned therein shall not directly or indirectly purchase any properties at a sale under those Acts It is fairly clear that prohibition should flow from a law as ordinarily understood that is to say an enacted law or a rule or regulation framed under such law The rules and administrative instructions governing the public servants holding the civil posts have no application within this case

6.2 Prevention of Food Adulteration Act:~

The object and purpose of the POFAA (Act) are to eliminate the danger to human life from the sale of unwholesome articles of food It is enacted to curb the widespread evil of food adulteration and is a legislative measure for social defence It is intended to suppress a social and economic mischief-- an evil that attempts to poison for monetary gains the very sources of sustenance of life and the well being of the community The evil of adulteration of food and its effects on the health of the communities are assuming alarming proportions The offence of adulteration is a socio--economic offence The construction appropriate to social defence legislation is therefore one which would suppress the mischief aimed at by the legislation and advance the remedy The

[67] Bryant. Clifton D. (1974) Deviant Behavior:~ Occupational. and Organizational Bases. Chicago.

offences under the Act are really acts prohibited by the police powers of the State within the interests of public health and well--being .The prohibition is backed by the sanction of a penalty Intention or mental state is irrelevant

In State of Orissa v K.R Rao the Supreme Court defined the scope of the prohibition against selling of adulterated food The court observed:~ "In the absence of any provision express or necessarily implied from the context the courts would not be justified within holding that the prohibition was only to apply to the owner of the shop and not to the agent of the owner who sells adulterated food The Act is a welfare legislation to prevent health hazards by consuming adulterated food The mensrea is not an essential ingredient It is a social evil and the Act prohibits commission of the offence under the Act The essential ingredient is sold to the purchaser by the vendor It is not material to establish the capacities of the person vis--à--vis the owner of the shop to prove his authorities to sell the adulterated food exposed for sale within the shop It is enough for the prosecution to establish that the person who sold the adulterated article of food has sold it to the purchaser"

In Delhi Administration v ManoharLal the supreme Court held that the High Court within exercise of its revisional jurisdiction has no power to itself decide to commute the sentence imposed under sections 16/7 of the Act and direct the convict to deposit within trial court a specified sum as fine and inform the government of such deposit for formalizing the matter by passing appropriate order[68]

In State of H.P v Narendra Kumar the Supreme Court observed:~ "The occurrence of adulteration took place nearly two decades back. and the courts below acquitted the accused though erroneously Therefore keeping within view the nature of violation and the peculiar facts and circumstances of the case while sentencing the accused to undergo 6 months RI and fine of Rs 1000 we make it clear that if the accused moves the appropriate government to commute the sentence of imprisonment the same may be considered subject to such conditions or terms as the government may choose to impose For a period of 3 months the accused need not surrender to undergo sentence During this period it shall be open to him to move the appropriate government for commutation The fate of the order of commutation if any shall be operative If no order within the matter of commutation is passed by the appropriate government the accused shall surrender to serve the remainder of the sentence".[69]

[68] u/s 433(d) of Cr.P.C

[69] Clinard. Marshall B. Richard Quinney (1973) Criminal Behavior Systems:~ A Typology. New York:~ Holt. Rinehart & Winston.

Other statutes:~

There are other statutes as well which deal by way of white collar crimes For instance the Conservation of Foreign Exchange and Prevention of Smuggling Activities (COFEPOSA) and Smugglers[70] also deal by way of white collar crimes

In Safiya v Govt of Kerala the Supreme Court observed that the court could not lost sight of the fact that those who commit economic offences do harm to the national interest and economy The High Court came to the conclusion that the detenue has violated the provisions of the law (COFEPOSA) and his activities are not within the larger national interest The court should be slow to come to the aid off the detenue within such cases

Similarly within Kesar Devi v U.O.I the Supreme Court while upholding the forfeiture of the properties of the offender observed:~ "The combined effect of section 6(1) and section 8 is that the competent authorities should have reasons to believe that properties ostensibly standing within the name of a person to whom the Act applies are illegally acquired properties he can issue a notice to such person Thereafter the burden of proving that such properties are not illegally acquired properties will be upon the person to whom notice has been issued Under the scheme of the Act there is no requirement on the part of the competent authorities to mention or establish any nexus or link between the money of the convict or detenue and the properties sought to be forfeited within the present case the appellant is the wife of the detenue and she has failed to establish that she had any income of her own to acquire the three properties within such circumstances no other inference was possible except that it was done so by way of the money provided by the husband".

(i) Emergence of Socio--Economic Offences

The Socio--Economic Offences have been incepted since times immemorial but remained dormant until the beginning of World War II However according to Prof Albert Morris the first paper entitled "Criminal Capitalists" on the subject was presented by Edwin C.Hill before the International Congress on the Prevention and Repression of Crime at London within 1871 Prof A.Morris himself had drawn the attention of criminologists towards this newer form of criminalities within 1934.

[70] Foreign Exchange Manipulators (Forfeiture of Property) Act. 1976(SAFEMA)

1 Nevertheless the statue of this newer form of criminalities was for the first time shaped by a well known criminologist Prof Edwin H Sutherland within 1939 Sutherland described these newer crimes as White Collar Crimes The two world wars badly affected the whole set--up of our communities at large resulting within the sudden upsurge of many problems One of the major problems was the scarcities of the essential things and a mounting demand for them The people occupied within trade (i.e businessmen) started to take advantage of the war situation; thereby avarice and rapacities developed among them which accelerated the growth of the newer form of criminalities within a substantial way For instance the big business corporations of America — as noticed by Sutherland indulged within the commission of various white collar crimes which are as follows:~ Chapter – 2 31 "Promulgating false or misleading advertising illegal exploitation of employees mislabelling of goods violation of weights and measures statutes conspiring to fix prices selling adulterated food stuffs and evading corporate taxes etc."

2 The present century is well known for the remarkable development within the field of science and technology; simultaneously industry and commerce have also spreaded the wings of revolution all over the world This Industrial Revolution abruptly changed the entire social economical and political structure of our societies throughout the world such that people have abandoned the high cultural goals and socially approved techniques of achieving them because an overwhelming emphasis is made on achieving certain objectives e.g political powers monopolistic control over business and high economic status without due regard to the question of whether they can be achieved by legally approved means or not Therefore high ethical standards and moral values were discarded within favour of power money and material things Such circumstances have made the environment more conducive for the monstruous growth of the newer form of criminality particularly within developing countries like India Thus all sorts of anti--social activities i.e frauds corruption adulteration of food stuffs misappropriation and misrepresentations are now carried on a large scale by the .persons of upper and middle socio--economic class within the course of their trade commerce industry and other professions as well

The policy of Laissez--faire or non--interference of the State within the material pursuits of the individuals and associations created an atmosphere of extreme business competitiveness for monopolistic advantages; which resulted within the multiplicities of the socio--economic Chapter –32 offences beyond recognition specially within the industrial countries Thus unbridled capitalism posed a serious threat to the social welfare However the State within its turn did no longer remain a silent spectator to the victimization and sufferings of the general masses It began to realize the dangers inherent within unrestricted capitalism so the governments within different countries decided to come out by way of welfare schemes for improving the living

standards of the common masses and bringing about social and economic justice within the societies by putting an effective check on the nefarious activities (socio--economic offences) of many categories of anti--social elements so as to preserve the morality. and protect the public health. and material welfare of the communities as a whole Today the State being a Welfare State tends to control a vast number of means of production and distribution of goods and material services etc Therefore the activities of the State multiplied to a greater extent But unfortunately the heavy responsibilities of the State over burdened its administration which led to the inefficient functioning of the governmental machinery within addition to the above some incompetent dishonest and inscrupulous persons made their way into various public services Both the aforesaid factors became fertile grounds for the expansion of socio--economic offences e.g bribery corruption favouritism and nepotism within public services and among persons within high authority Trafficking within licences permits and quotas embezzlement misappropriation and frauds relating to public property. and violation of specifications within public contracts etc Thus for knowing the extent of the emergence of socio--economic offences within this country it is required to make a reference to the list prepared for socioeconomic offences by the Santhanam Committee though the list is not comprehensive The categories of socio--economic offences noted by that committee are as follows:~ ...Such offences may broadly be classified into:~

(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 servants within making of contracts and disposal of public property issue of licenses and permits and similar other matters;

(4) Delivery by individuals and industrial and commercial undertakings of goods not within accordance by way of agreed specifications within fulfilment of contracts entered into by way of public authorities;

(5) Profiteering black marketing and hoarding;

(6) Adulteration of food stuffe and drugs;

(7) Theft and misappropriation of public property and funds; and

(8) Trafficking within licenses and permits etc.

6.3 THE CONTROL OF WHITE--COLLAR CRIME and REMEDIAL MEASURES:~

In a country like Bangladesh where large scale starvation mass illiteracy and ignorance affect the life of the people white collar crimes are bound to multiply within large proportion Control of these crimes is a crucial problem for the criminal justice administration within this country

However some of the remedial measures for combating white collar criminalities may be stated as follows:~--

1. Creating public awareness against these crimes through the media of press platform and other audio--visual aids Intensive legal literacy programmers may perhaps help within reducing the incidence of white collar criminalities to a considerable extent.
2. Special tribunals should be constituted by way of power to award sentence of imprisonment upto ten years for white collar criminals.
3. Stringent regulatory laws and drastic punishment for white collar criminals may help within reducing these crimes Even legislations by way of retrospective operation may be justified for this purpose.
4. White collar offenders should be dealt by way of sternly by prescribing stiffer punishments keeping within view the gravities of injury caused to societies because of these crimes.
5. There is an urgent need for a National Crime Commission which may squarely tackle the problem of crime and criminalities within all its facets.

Above all public vigilance seems to be the cornerstone of anti--white collar crime strategy Unless white collar crimes become abhorrent to public mind it will not be possible to contain this growing menace. White collar crimes are the new methodology that criminals engage in presumably authoritarians and associated professionals The modern contemporary societies puts within place regulatory laws for these trusted criminals This document relates to some of some of the civic and criminal laws and how they apply to white collar crimes.

White--collar crime is another classification of crime This type of crime focuses on the safeties of both consumer products and employees within the workplace Not to anyone's surprise white--collar crime receives a small amount of media coverage because we the public consumers are told that we do not need to read nor to hear about it This type of crime within some respects may be even more detrimental to a portion of the public's safeties than is a person who commits a form of criminal action on the streets.

6.4 White collar crime distinguished from traditional crime:~[71]

There is much resemblance between white collar and the blue collar crime Both owe their origin to common law and are adaptation of principles of theft fraud etc to modem socio--economic institutions But there are peculiarities between them.

[71] Ermann M. David. Richard J. Lundman (1996) Corporate. and Governmental Deviance. 5th edn. New York:~ Oxford Universities Press.

1. White collar criminals are intelligent stable successful and men of high social status They are foresighted persons belonging to the prestigious group of society On the contrary blue collar criminals are ordinary common. and men of comparatively lower social status.

   1.White collar crimes which are committed within commercial world are indirect anonymous impersonal and difficult to detect But ordinary criminal commit crimes which are direct and involve physical action such as beating removal of properties or use of force etc It can easily be identified and detected.

3. Ordinary crimes are more common such as assault robbery dacoity murder rape kidnapping and other acts involving violence etc.which are mostly committed by the under--privileged class On the other hand the privileged prestigious class and large corporations involved within white collar crimes.
4. The criminal content such as *mensrea* or guilties mind is an essential ingredient of every traditional or blue collar crime but many statutes dealing by way of white collar crime do not require *mensrea* within strict sense of the term yet doctrine of constructive *mensrea* applies within such cases.

6.5 WHITE COLLAR CRIME & CRIMINOLOGICAL THEORIES:~

When Sutherland first wrote about white--collar crime he maintained that it was best explained by his theory of differential association For Sutherland the law--breaking behaviour of businessmen professionals and politicians was the product of a learning process Violators encountered examples of law--breaking among those by way of whom they worked and they drifted or jumped into such patterns of behaviour as part of their routine indoctrination into the requirements of their job within time they found that the definitions they encountered favourable to violation of the law overruled those encouraging law--abiding behaviour.

White Collar Crimes is a very difficult subject as it has no true definition There are many different types of white collar crimes some still unknown White Collar Crimes is a term that is use loosely for crimes involving commercial fraud cheating consumers swindles insider trading on the stock market embezzlement and other forms of dishonest business schemes Throughout this research paper is going to be a brief description of thetheories foundations and enforcement of white collar crime.

6.6 Genesis of white--collar crime (WCC):~

The Genesis of white collar crime is not that ancient The term white--collar crime dates back to 1939 As said earlierProfessor Edwin Hardin Sutherland was the first to coin the term. and hypothesize white--collar criminals attributed different characteristics and motives than typical

street criminals Mr Sutherland originally presented his theory within an address to the American Sociological Societies within attempt to study two fields crime and high society which had no previous empirical correlation He defined his idea as "crime committed by a person of respectability and high social status within the course of his occupation" Many denote the invention of Sutherland's idiom to the explosion of U.S business within the years following the Great Depression Sutherland noted that within his time "less than two percent of the persons committed to prisons within a year belong to the upper--class." His goal was to prove a relation between money social status. and likelihood of going to jail for a white--collar crime compared to more visible typical crimes Although the percentage is a bit higher today numbers still show a large majorities of those within jail are poor "blue--collar" criminals despite efforts to crack down on corporate crime.[72]

It must however be stated that Sutherland was preceded by otherwriters who focused attention on the dangers to societies from the upper socio--economic group who exploited the accepted economic system to the detriment of common masses Thus Albert Morris refers to a paper entitled' Criminal Capitalists' which was read by Edwin C Hill before the International Congress on the Prevention and Repression of Crime at London within 1871 within this paper the learned writer underlined the growing incidence of crime as an organized business and its evil effects on society within 1934 Morris drew attention to the necessities of a change within emphasis regarding crime He asserted that anti--social activities of persons of high status committed within course of their profession must be brought within thecategory of crime and should be made punishable.

Finally E.H Sutherland through his pioneering work emphasized that these 'upper world' crimes which are committed by the persons of upper socio--economic groups incourse of their occupation violating the trust should be termed "White Collar Crime" so as to be distinguished from traditional crime which he called "Blue Collar Crime" Thus he observed that if a broker shoots hiswife's lover that is not a white collar crime but if he violates the law and isconvicted within connection by way of his business he is a white collar criminal

There have been tendency to picture lower class people are more likely to commit criminal acts giving a misleading idea that upper class people are free from criminal activities But the practice of crime and corruption by people of upper echelon of the societies is not uncommon and pointed from time to time The term "White Collar Crime" has been within frequent use within the literature of American Criminology since December 1939 to indicate the practice of chicanery

[72] **Criminal Defense attorneys Ronald J. Manto. and Kristi F. Kassebaum**

and lotion of highly placed persons within December 1939 Edwin H Sutherland used the term "White Collar Crime" within his presidential address before the American Sociological Society There was no official or legal definition for that reason the term was a bit ambiguous and controversial Sutherland used "White Collar Crime" as the title for his remarks He discussed the issues relating to "White Collar Crime" and later on elaborated many of its ramifications

Sutherland starred systematic research into the criminal practice of the elites after the appearance of the first edition of his "Criminology" within 1924 within second (in 1934) and third edition (in 1939) he changed the title of the book (Principles of Criminology) and subsumed scattered comments on White Collar Crime But his 1939 presidential address was his first systematic formulation of the term which was subjected to criticism of different quarters He responded to those criticisms within his article "Is 'White Collar Crime.' crime?" published within 1946 He published a hook length study "White Collar Crime" within 1949 where he accumulated the data which he collected during many years research He systematically presented his arguments and discussed the implications of the theory.

New Horizons within criminology by Barnes and Teeters was first published within 1943.This well known text book started by way of a discussion of "revolution within the nature of crime" and described questionable commercial transactions racketeering and organized crime as "White Collar Crime." From that time onwards every textbook of Criminology contains a chapter having the title "White Collar Crime."

6.8 NATURE and DEFINITION OF WHITE COLLAR CRIME:~

The concept of "white collar crime" found its place within criminology forthe first time within 1941 when *Sutherland* published his research paper onwhite collar criminalities within the American Sociological Review He definedwhite collar crime as a "crime committed by persons of respectabilities andhigh social status within course of their occupation" A white--collar criminalbelongs to upper socio--economic class who violates the criminal law whileconducting his professional qualities

White collar crime can be defined within many ways It has been defined ascrime committed by one of respectable or high social status or within thecourse of one's occupation as crime that involves deceit or a breach oftrust as nonviolent crime undertaken for personal gain as crime thatinvolves a combination of these factors. and simply as business crime.

According to Encyclopedia.White--collar crime is financially motivated nonviolentcrime committed for illegal monetary gain Within criminology it was first defined by sociologist Edwin Sutherland within 1939 as "a crime committed by a person of respectability and high

social status within the course of his occupation" Sutherland was a proponent of symbolic interactionism and believed that criminal behavior was learned from interpersonal interactions White--collar crime is similar to corporate crime as white--collar employees are more likely to commit fraud bribery Ponzi schemes insider trading embezzlement cybercrime copyright infringement.money laundering identities theft. and forgery.

6.9 THEORIZING WHITE COLLAR CRIME within BANGLADESH:~

Different types of white collar crimes elaborated by Edwin H Sutherland are prevalent within Bangladesh Misrepresentation of financial statements manipulation of stock exchange bribery misrepresentation within advertising dishonest bankruptcies—all pertain coexisting practices of the people of upper socio--economic class within the above mentioned instances importance has been given to all-- pervasive corruption which is committed by misuse of power taking bribery extortion fraud misappropriation. and misuse of trust funds different forms of white col1ar crime The onlydifference is that within developed societies like USA white collar crimes are committed by the elite people but within Bangladesh those are committed by the middle class and lower middle class people so far corruption is concerned.

6.10 WHITE COLLAR CRIME & CRIMINOLOGICAL THEORIES:~

When Sutherland first wrote about white--collar crime he maintained that it was best explained by his theory of differential association For Sutherland the law--breaking behaviour of businessmen professionals and politicians was the product of a learning process Violators encountered examples of law--breaking among those by way of whom they worked and they drifted or jumped into such patterns of behaviour as part of their routine indoctrination into the requirements of their job within time they found that the definitions they encountered favourable to violation of the law overruled those encouraging law--abiding behaviour.[73]

6.11 WHITE--COLLAR CRIME SHOULD ATTEND and NOTICE SERIOUSLY within BANGLADESH:~

[73] Criminology--second edition by Monjur Kader(Assistant Judge.Dhaka)&Md.MuajjemHussain(Judicial Magistrate.Sylhet).

In our country the societal structure paved the way for committing white collar crime Bangladesh is over populated country and the people living here are unskilled and uneducated The administrative and organizational structure remains merely same as it was during the British period Organs of the State are not well separated within practice The traditional laws can be employed to punish the white collar criminals Specific law should be enacted addressing the white collar crime without any delay Strengthening the role of Anti--Corruption Commission as established under section 3 of the Anti Corruption Act 2004 might play an important role to reduce the white collar crime.

White collar crime is being swelled within all the sectors of our country Being a fertile ground for the commission of such crime it is increasing day by day There is no doubt that impact of white collar crime is comparatively grievous enough than that of street crime or blue collar crime within most of the case white collar crimes affect a large number of mass people and sometimes its impacted loss was irreparable by any means The Government should take the matter seriously without delay and should step forward for taking appropriate measures within this respect.

6.12 GOVERNMENT RESPONSE TO THE FINANCIAL CRISIS

The government's sharp focus on banks and other financial institutions is likely to continue at a significant level within 2011 within the immediate aftermath of the financial crisis as some commentators and public figures have urged that financial institutions and their senior executives be held responsible the scope of investigative activities has been vast.

The Department of Justice SEC CFTC. and state attorneys general have all been focused on the financial community Among major actions resolved within 2011 were the SEC's claims against several major financial institutions for alleged deceptive practices within the sales of CDOs as well as banking regulators' imposition of far--reaching consent orders by way of 14 loan servicers related to so--called "robo--signing" practices within connection by way of home loan foreclosures within addition the SEC brought actions against six former senior executives of Fannie Mae and Freddie Mac. and a number of investigations of banks and financial institutions are continuing both at the state and federal level The newly formed Consumer Financial Protection Bureau will be yet another enforcement agency examining this area.

Financial institutions should expect that their activities will continue to be highly scrutinized by these law enforcement agencies The best protection is to take steps proactively to prevent misconduct from occurring Investing within strong compliance systems hiring experienced compliance and risk professionals adopting improved technology for surveilling potential compliance lapses rapidly and thoroughly reviewing any emerging issues. and setting a clear tone at the top of zero tolerance for inappropriate activities remain essential.

6.13 WHISTLEBLOWER--INSPIRED INVESTIGATIONS

As expected the Dodd--Frank whistleblower bounties program has triggered an increase within tips to the SEC. and within resulting investigations within some instances the SEC Enforcement Staff has launched broad investigations by way of sweeping requests for document production without any overt acknowledgement that the investigation is based on a whistleblower complaint. and by way of little willingness to identify areas of potential concern for companies and their counsel to examine and address within other cases the SEC Enforcement Staff has expressly informed companies that the SEC has received a whistleblower complaint. and has requested that counsel examine specific transactions or practices and then make a presentation of the facts to the Staff During the Dodd--Frank rulemaking process the SEC endorsed using the latter approach where appropriate.[74] It remains to be seen to what extent the Staff will take that endorsement to heart Obviously a more transparent approach allows for more efficient and proportional devotion of resources to put the Staff within a position to make a well--informed decision about whether further inquiry is warranted It also puts companies within the best position to determine whether any improprieties have occurred and whether any remedial measures are warranted.

Early experience is not sufficient to assess whether the fear will be realized that whistleblowers will stop raising concerns through their employer's internal compliance or ethics reporting mechanisms and instead contact the SEC directly It continues to be critical therefore that companies continue emphasizing a commitment to ethical business practices while also communicating effectively to employees the importance of utilizing internal reporting mechanisms within the event they become aware of possible wrongdoing When whistleblowers do come forward internally it is essential to respond appropriately investigate promptly and take action where warranted.[75]

[74] SEC Final Rules
[75] The New Dodd Frank Whistleblower Rules:~ Hype. and Reality

6.14 IMPACT OF THE SEC INSPECTOR GENERAL

The advent of increased scrutiny by the SEC Inspector General of the SEC Staff's conduct and resolution of investigations has further complicated the landscape within the best of circumstances defending an SEC investigation is challenging The SEC Enforcement Staff is skeptical and thorough. and they have powerful investigative tools at their disposal But now companies face an agency whose Inspector General has been frequently within the news for conducting numerous highly publicized investigations of the Staff's own activities each of which has culminated within the public release of an extensively detailed investigative report. and often sharp criticism of the Staff including decisions made to settle or close cases.[76]

Some observers might react by way of a bit of *schadenfreude* at the sight of the tables being turned on the SEC but such a reaction would be shortsighted Today everyone who works at the SEC knows that they are only one judgment call away from being summoned for testimony before the Inspector General or from having their emails reviewed by way of the risk of a publicly released report and Congressional hearings to follow dissecting their conduct This state of affairs can make it more difficult for the Staff to be comfortable about closing a case or reaching a reasonable compromise within a settlement within recognition of defense arguments litigation risks and similar appropriate considerations.

The public interest would be best served by a change within these circumstances Until that happens however parties involved within SEC inquiries should be mindful of the extraneous factors that may impact an investigation It is more critical than ever to maintain credibility and lines of communication by way of the Staff This maximizes the possibilities of learning of unanticipated shifts within the investigation as well as the opportunities to be heard before the Commission takes action It is also an unavoidable realities that the Staff is doing considerably more work than within the past before closing unpromising investigations Counsel must be alert to opportunities to assist the Staff within developing a sufficient evidentiary basis to make a confident decision to close the inquiry whenever they are ready to do so.

6.15 JUDICIAL REVIEW OF SEC SETTLEMENTS

One of the biggest developments within 2011 within the white collar and regulatory enforcement area came at the very end of the year when U.S District Judge Jed Rakoff rejected a $285 million

[76] Investigation of the SEC's Response to Concerns Regarding Robert Allen Stanford's Alleged Ponzi Scheme

settlement negotiated by Citigroup and the SEC to resolve charges that Citigroup engaged within securities fraud within connection by way of the marketing of CDOs Judge Rakoff stated it was impossible to evaluate whether the proposed settlement was fair reasonable or adequate because the Court did not have a "sufficient evidentiary basis" to know whether the requested relief was justified and whether the underlying allegations were supported by "any proven or acknowledged facts." More fundamentally Judge Rakoff made clear his view that the SEC's long--standing practice of settling by way of defendants while allowing them to neither "admit nor deny" the allegations asserted against them "deprives the Court of even the most minimal assurance that the injunctive relief it is being asked to impose has any basis within fact." A federal judge within Wisconsin citing Judge Rakoff's recent Citigroup opinion has refused to approve an SEC consent settlement involving Koss Corp. requesting that the SEC provide a written factual predicate to establish that the proposed judgments are fair reasonable adequate and within the public interest.[77] And Congress has ordered hearings on the SEC's "no admit no deny" settlement practices which are no different within fact than those of numerous other federal agencies by way of civil enforcement power.[78]

Insider Trading

This past year has seen a continuation of the government's relentless drive against insider trading by way of a special focus lately on cases involving hedge funds The leading case against Raj Rajaratnam has resulted within a conviction and an unprecedented 11 year sentence. and it could have been double that but for his poor health There were a number of other successful convictions and SEC charges against other insider traders.

These cases are based on the new use within the insider trading context of techniques that traditionally had been limited to investigations of organized crime and other non--white collar crimes Legal challenges to evidence obtained by these methods within the insider trading context have failed so far. and the latest challenge by Rajat Gupta to the use of wiretap evidence against him will likely based on comments by the court be an uphill battle.

While the current wave of cases has been highly publicized it has not involved an expansion of the reach of insider trading law The Galleon--related and expert network cases brought to date have generally involved highly material information communicated within clear breach of

[77] *SEC v. Koss*
[78] Announcement of Hearing on SEC Settlement Practices

confidentialities duties The thing to watch for within 2012 is whether the government ventures further within the next wave of cases The cases pursued to date have not called into question the types of legitimate research that are performed every day by investment professionals The work of investment analysts will become much more perilous if future cases involve information as to which materialities is more debatable or circumstances within which the existence of a duties of confidentialities is more uncertain.

Unless regulators and prosecutors exercise restraint and follow established precedent on the elements of insider trading there is a danger to investment professionals that the line between legitimate research and insider trading will become more blurred and uncertain This could expose investment professionals and their firms to outsized risks even when they are acting within good faith It is thus even more imperative that investment firms implement compliance systems designed to ensure that their personnel are appropriately trained. and that any judgment calls are escalated and thus can be made at an appropriate level within the firm by way of the benefit of legal and compliance advice where warranted.

International Anti--Corruption Enforcement

2011 was one of the most active years for FCPA enforcement on record The government's enforcement efforts also included a significant number of individual prosecutions reinforcing a recent trend within which the DOJ and SEC have pursued charges against responsible employees and other parties within matters resulting within corporate settlements within December 2011 for example the DOJ and SEC brought criminal and civil charges against a number of former executives and two former outside agents of Siemens AG relating to the same conduct giving rise to Siemen's corporate FCPA settlement within 2008.

The government did not always win within the FCPA arena within the first trials arising out of the SHOT Show sting operation the jury deadlocked and the federal district court declared a mistrial within December a federal district court within California citing grounds of prosecutorial misconduct vacated convictions and dismissed indictments by way of prejudice against Lindsey Manufacturing and two of its officers who had been found guilties after trial.[79] (Prior to that ruling the case had represented the first--ever conviction of a corporation after trial on FCPA charges.)

[79] *U.S. v. Lindsey Manufacturing*

The DOJ and SEC reemphasized within 2011 their oft--stated position that when FCPA problems do arise companies can gain benefits from strong compliance programs selfdisclosure self--remediation and cooperation These benefits came within a varieties of forms including significant fine reductions[80] avoiding required retention of an independent monitor (J&J) a DOJ non--prosecution agreement[81] or the SEC's first--ever deferred prosecution agreement[82] The DOJ and SEC also made clear within the latter part of 2011 that within appropriate cases they have declined. and will continue to decline to bring FCPA charges.

Reflecting mistrust of these promised benefits from cooperation the U.S Chamber of Commerce will likely continue its recent efforts within 2012 to seek greater clarities through proposed legislative amendments to the FCPA including express affirmative defenses for an effective anti--corruption compliance program and a more narrow approach to the definition of what constitutes a "foreign official" under the FCPA within response the DOJ has said it will provide new FCPA guidance within 2012 though it is unlikely to adopt the full array of proposed reforms.[83]

Overseas the biggest development within 2011 was the coming into force of the U.K Bribery Act on July 1 The Act which covers official and commercial bribery and is within some respects broader than the FCPA is most noteworthy for establishing a strict liabilities corporate offense of "failure to prevent bribery." as well as a complete defense to such charges where a company can demonstrate that it had implemented "adequate procedures" to prevent conduct that violates the Act The detailed guidance issued by the U.K Ministry of Justice and the Serious Frauds Office within advance of the Act's effective date emphasized that U.K authorities will exercise significant discretion within enforcing the Act and within doing so generally will take a proportionate approach within evaluating conduct that might be within the scope of the Act as well as evaluating the adequacy of corporate compliance efforts.

Other key international developments within 2011 involved efforts within several jurisdictions to implement anti--corruption legislation for the first time within February 2011 the Chinese government adopted an amendment to its criminal laws which prohibits bribery of foreign public officials or officials of an international public organization within order to obtain an illegitimate commercial benefit within May 2011 similar anti--corruption amendments took effect within

[80] *J&J*. *Deutsche Telekom*
[81] *Aon*. *Comverse Technologies*
[82] *Tenaris S.A.*
[83] http:~//www.justice.gov/criminal/pr/speeches/2011/crm--speech--111108.html

Russia Similar legislation is being considered within other countries including India While it remains to be seen just how these developments affect anti--corruption enforcement efforts within China and Russia and other affected countries the clear trend is that lawmakers and regulators within foreign jurisdictions are devoting more attention than ever to combating international corruption.

Companies doing business internationally should ensure that they have implemented and maintain state--of--the art anti--corruption compliance programs including up--todate risk assessments to ensure that the program is appropriately tailored to the actual risks faced within conducting the company's business effective policies procedures and monitoring protocols including by way of respect to promotional expenditures evaluation of foreign counterparties and third--parties agents or representatives up--to--date training as well as reaffirmation of top management's commitment to a corporate culture that reinforces the company's anti--corruption efforts.[84]

False Claims Act

A record--high level of False Claims Act enforcement remained part of the white collar terrain within 2011 The federal government recovered a total of $3 billion within FCA cases within the past year Many of these cases originate by way of whistleblowers. and they received over $500 million of the government's recoveries within 2011 The most active areas continued to be the health care and pharmaceutical industries followed by defense and procurement cases The FCA is now being invoked within financial crisis cases as well by way of at least two civil actions filed against a financial institution challenging mortgage--related practices. and widespread press reports of ongoing similar investigations involving other firms.

Criminal Antitrust Enforcement

Criminal antitrust enforcement continues to be a top priorities of the Antitrust Division within 2011 there were 90 Sherman Act cases yielding a corporate fine or financial penalties of $10 million or more—18 of $100 million or more. and six of $300 million or more. and the average prison sentence is now 30 months as compared by way of eight months within the 1990s.

[84] Recent Developments within Antibribery Enforcement

Of particular importance within 2011 was the Antitrust Division's close collaboration by way of the Financial Fraud Enforcement Task Force The Task Force was established to investigate and prosecute a wide array of financial crimes. and it currently is working within tandem by way of the Antitrust Division on an investigation of the municipal bond industry that has resulted within multiple guilties pleas by individuals and settlements by firms within addition within 2011 the Task Force and Antitrust Division teamed up to investigate bid--rigging and fraud at public auctions of foreclosed real estate within California We anticipate further joint investigations of this type—with criminal antitrust theories especially as to bid--rigging and market allocation figuring more prominently into broad--based fraud investigations.

CHAPTER--7

CONCLUSION and SUGGESTIONS

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The study reveals that despite having so many laws to curtail the menace of white collar crimes these crimes are still increasing due to the problem of enforcement of laws White collar crimes are committed by the persons belonging to high social status and 86% from the public hold that white collar offenders escape punishment due to their high social status Prevalence of corruption is one of the problems which our country has been facing from time immemorial Corruption retards our country's growth and welfare to the maximum extent and 78% people within Punjab hold that corruption is that main cause for the lack of enforcement of laws relating to white collar crimes Trained officials are the back bone for enforcing any penal Statutes but on this issue 86% of people within Punjab hold that the enforcement officials are not trained enough to enforce the laws relating white collar crimes

The role of public is also very important for ensuring the proper enforcement of laws and on this issue 73% people of Punjab hold that they can actively participate within the enforcement of laws relating to white collar crimes The enforcement aspect is very important to check the problem of the white collar crime and unless there is no proper enforcement of laws relating to these crimes the problem of white collar crimes cannot be contained Apart from other enforcement agencies State police also plays a vital role within the enforcement of laws relating to these crimes and100% of police personnel from Punjab are well versed by way of the concept of white collar crimes The State police handles so many types of crimes and 66% from them hold that white collar crimes are more serious as compared to traditional blue collar crimes 100% police officers of Punjab also hold that after commission of crimes chances of being caught are high within case of traditional blue collar crimes as compared to white collar offenders Regarding the punishment to white collar offenders 72% of police Personnel within the State hold that white collar offender should be punished more severely as compared to traditional blue collar criminal It means that apart from general public the police personnel of the State are within favour of strict punishment to these offenders

The Police Personnel also hold that the enforcement officials must be technically educated only than the shrewd white collar criminal can be traced and punished severely The first step taken against the white collar offender is taken by the enforcement/investigating agencies If the investigating agencies are not properly educated about these technicalities then white collar criminals will be acquitted by the judicial courts due to the lacks within investigation The lack of strength of police personnel also comes within the way of proper handling of these crimes There

is lot of political and other pressure on the police personnel within the State of Punjab which deviate them from the path of enforcement of laws relating to white collar crimes White collar crimes forms separate category of offences and for handling such sort of crimes specific skills are required but only 30% of police personnel within Punjab have got such training to handle these crimes It shows that majorities of the police officers within Punjab are not properly trained to handle these crimes by way of the advancement within technology cyber--crimes are also increasing by leaps and bounds but only 1% of the police personnel within Punjab have got training to handle cyber--crimes It indicates that the investigators of these crimes are not technically advanced to investigate these crimes

Lawyers and public prosecutors also play a vital role within the enforcement of laws relating to these crimes and they also are aware about the concept of white collar crimes 60% of lawyers within the State hold that white collar crimes are more serious as compared to traditional crimes It shows that apart from general public and police personnel the lawyers also hold that traditional crimes are less serious as compared to white collar crimes For curtailing the menace of white collar crimes these offenders must be punished severely and 84% of the lawyers and public prosecutors within the State of Punjab hold that within comparison to traditional offender white collar offender should be punished more severely It shows that the professional class of the State is within favour of strict punishment to these offenders The majorities of the lawyers within the State of Punjab hold that these crimes are increasing due to the lack of enforcement of laws relating to these crimes Similarly the lawyers also hold that by improving our enforcement agencies as well as close coordination among them the laws relating to these crimes can be properly enforced 94% of the lawyers hold that by speedy disposal of white collar crime cases the enforcement of laws can be improved

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