

INTERNATIONAL JOURNAL OF INTEGRATED LAW REVIEW

Volume 2 | Issue 2

2021

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White Collar Crime in Covid World

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ABSTRACT

The word "white-collar crime" implies to nonviolent crime that is motivated by and perpetrated by business and government officials. In 1939, sociologist Edwin Sutherland described it as "a crime committed in the course of one's employment by an individual of respectability and high social standing." Deception, concealment, or breach of confidence are the main elements of a white-collar crime and they do not include the use or act of aggression or abuse. These crimes are motivated by a desire to acquire or prevent losing money, assets, or resources, or to gain a private or corporate benefit. There aren't crimes with no victims. A single scam can bankrupt a business, wipe out a family's entire savings, or the stakeholders' crores of rupees.

The COVID-19 epidemic has altered several parts of human existence, including the manner we live and work. As a result, there has been an upsurge in financial frauds. 2020 will be a year that only a few of us will remember. Fraudulent activities have climbed by 33% from April, per the statistics by Experian and the National Hunter Fraud Prevention Center. As per the reports action fraud, scams and cyberattacks have increased by 400 percent in the United Kingdom.

As per a research released in November 2020 by Transparency International, India seems to have the greatest level of bribing in Asia, i.e., 39 percent of respondents polled saying how they paid bribes for utilizing government services.

In the paper I will be discussing about the steps that can be taken to curb the white-collar crimes in this pandemic affected digital world, like, the state should enact rules which are stringent enough to prevent such offences from being committed. As well as the mechanism must be set up so that not only are there rules that penalise the convicted harshly.

Keywords: Bribing, Concealment, Corporate benefit, Deception, Non-violent

I. INTRODUCTION

The word "white-collar crime" implies to nonviolent crime that is motivated by and perpetrated by business and government officials. In 1939, sociologist Edwin Sutherland

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described it as "a crime committed in the course of one's employment by an individual of respectability and high social standing."

Deception, concealment, or breach of confidence are the main elements of a white collar crime and they do not include the use or act of aggression or abuse. These crimes are motivated by a desire to acquire or prevent losing money, assets, or resources, or to gain a private or corporate benefit.

There aren't crimes with no victims. A single scam can bankrupt a business, wipe out a family's entire savings, or the stakeholders' crores of rupees.

Some of the common examples of white-collar crime are:

- Counterfeiting
- Money Laundering
- Tax Evasion
- Cell Phone Frauds
- Extortion
- Forgery
- Computer Frauds
- Fake Employment Placement Rackets

II. FRAMEWORK FOR LAW

The following are some of the most important laws that deal with such crimes:

The PCA (Prevention of Corruption Act) was enacted in 1988.

Bribery of public officials is made illegal under the PCA. The Act punishes

- The Act sanctions government employees who gain an unfair advantage by inappropriate execution of duties, as well as those who engage in criminal misbehaviour such as unlawful gain and misuse of protected property.
- Individuals for inciting such poor performance and providing bribes to public officials.
- Commercial organizations can be fined if people connected to them pay bribes to public officials for the benefit of the company.

The Companies Act of 2013

In white-collar crimes involving corporations, the CA analyses the importance of significant players. The Act requires auditors to disclose misconduct and imposes a fiduciary obligation on executives to work in the best interests of the corporation and refrain from making excessive advantages. Scam involving a company operation, including activities undertaken with the goal to defraud or obtain an unfair benefit from the firm, is illegal. The CA (together with the SEBI LODR) mandates that some firms set up a surveillance system for executives and staff to disclose serious concerns.

The Prevention of Money Laundering Act of 2002 (the "PMLA") is a federal law that prohibits the laundering of money.

According to the PMLA, anybody who engages in any action involving the profits of fraud, namely hiding, custody, procurement, or use, and portraying it as untainted assets, is liable of financial fraud and faces a sentence of more than 3 years in jail, with a maximum sentence of 7 years in jail, as well as a fine.

The Information Technology Act of 2000 (the "IT Act") is a federal law that regulates the use of information technology

Offences linked to interfering with computer source documents, computer-related offences such like damaging data, luring, or putting malware on computing devices, identity fraud, deception by creating a profile and breach of privacy, internet fraud are all covered under the Information Technology Act, 2000.

III. WHITE COLLAR CRIME DURING THE PANDEMIC

Worldwide

The COVID-19 epidemic has altered several parts of human existence, including the manner we live and work. As a result, there has been an upsurge in financial frauds. 2020 will be a year that only a few of us will remember. The outbreak has wreaked problems not only in our personal life but also in the economic sector. The epidemic has provided the ideal environment for deception, letting fraudsters to reap the benefits of the resulting worry and fear, while millions around the world work remotely due to social isolation and a projected recession induced by an economic slowdown.

Fraudulent activities have climbed by 33% from April, per the statistics by Experian and the National Hunter Fraud Prevention Center. As per the reports action fraud, scams and cyberattacks have increased by 400 percent in the United Kingdom. This type of fraud can

take various forms, and most of them are older frauds disguised as newer models. With a rise in organization's financial statement fraud cases, the insolvency scam and bogus claims will surge as well. The epidemic has also resulted in a rise in the embezzlement and stealing of firm assets, as more workers work remotely. With huge amounts of money allegedly given to scammers, the COVID-19 pandemic has spawned several unexpected scenarios. There have been reports of fraudsters filing false claims in order to defraud state coronavirus relief funding. And fraudulent sellers peddling personal protection equipment and medical supplies that never appear. There are also scam NGOs that send out scam emails that look like they're from health organizations, asking for funds to help fight COVID.

IV. THE CRIMINAL FRAUD TRIANGLE

How has the epidemic provided the ideal conditions for scams to flourish? It's best represented in the "fraud triangle hypothesis," a three-part auditing model that explains the reasons which can lead to somebody committing financial fraud. These are as follows:

Possibility

For several companies, working from home is novel and unanticipated. As there is less oversight and internal control mechanisms, workers now have access to resources and information that can help them to perform and hide fraud far more readily than they ever could while working in physically in office.

Justification

Jobs today are in jeopardy as the world's economy slows, a depression approaches, and corporations are now under pressure to reduce expenses. This can provide individuals with the psychological motivation they need to execute financial frauds in some instances. "I have no choice but to do this in order to sustain my mother." "I was not treated nicely by my company." It's a mental procedure that allows a human to sustain two contradictory states i.e. the potential to undertake or participate in immoral practices while abiding to good moral standards.

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Compulsion/Incentive

The stress or motivation to execute financial frauds completes the trio. People may be experiencing financial difficulties or may be on the verge of losing their jobs. Normally, they would never consider committing fraud, but in these unusual circumstances, they may believe that they really have no other option available.

India

Given the Covid-19 pandemic, white-collar crime and surveillance have increased significantly. Law enforcement have been highly frequent in initiating punitive proceedings such as property seizure and imprisonment. In relation to money laundering investigation, the Enforcement Directorate ("ED") confiscated property worth 1.6 million euros in France and detained the promoter of an insolvent tour company just a couple of months earlier. Other prominent arrests by the ED also include previous ICICI Bank MD-husband CEO's (in association with the ICICI-Videocon corruption charges) and the former Chairman of Yes Bank (in association with the YES Bank fraud money laundering charges). In FY'20, the ED probed roughly 170 incidents of laundering money under the Prevention of Money Laundering Act of 2002 ("PMLA") and carried roughly 430 inspections for PMLA and foreign exchange legislation offences.

The CBI has really been cautious as well, lately filing a FIR against the MD of a property investment firm as well as other employees for supposedly defrauding a government sector bank of around INR 200 crores. In some other case, the CBI charged a Hyderabad-based corporation with defrauding an eight-bank consortium for INR 4,736.57 crore.

As per a research released in November 2020 by Transparency International, India seems to have the greatest level of bribing in Asia, i.e. 39 percent of respondents polled saying how they paid bribes for utilizing government services.

Security Exchange Board of India (SEBI), India's financial markets watchdog, revised the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015.

V. KEY LEGISLATIVE ACTIONS AND JUDICIAL DECISIONS IN THE YEAR 2020

SEBI clarified the ban of deceptive, misleading, and unethical commercial activities in the securities market in October 2020. The goal is to prevent a firm from diverting, misusing, or diverting of resources or profits from a firm whose shares are publicly traded. SEBI also established a dedicated unit called the Corporation Finance Investigation Department (CFID) in the very same month to combat promoters misconduct. In addition, the Finance Act of 2019 amended the PMLA to broaden the definition of "proceeds of crime." In addition, the Companies (Auditor's Report) Order, 2020 was already postponed until April 2021, rather than April 2020, as originally planned. Staff of a recognized institution and members of a charitable foundation constituted to manage such institution are also regarded public workers and could be tried for illicit bribery under the Prevention of Corruption Act, 1988, according to the Apex Court. In addition, it ordered the deployment of Surveillance cameras throughout

all police station buildings, including that of the premises of the CBI, National Investigation Agency, ED, Narcotics Control Bureau, Department of Revenue Intelligence, and SFIO, in effort to stop human rights violations by probing agency officials.

Intriguingly, three PILs were brought before the Supreme Court, one demanding a directive to the government of Centre, state, and union territory to constitute professional panels to analyze and enhance India's position on the Corruption Perception Index (CPI); the other one demanding life imprisonment for crimes such as corruption, laundering, and many others; and the last one seeking the creation of special anti-corruption courts in each and every district.

The Pandemic continues in 2021

Firms have already been watching the escalation of prosecutions by agencies engaging in white collar crime, and as a result, the frequency of criminal investigation taken by the businesses has also increased, probably to prepare for any further proceedings. Another important material that could have an effect is that numerous organizations are adopting greater code of morality, accountability, and risk management. Risk evaluation will be an important component of the restart phase, and it will be managed by the compliance officer under the supervision of upper management.

Considering the Centre's stern public position on bribery, scams, and many other financial crimes, it's also expected that when the country rebounds from the effects of Covid-19 and returns to development and recovery, legislative Strict and investigative actions will expand, with a particular goal of curbing financial fraud and cyberattacks.

VI. RECENT WHITE COLLAR CRIME CASES IN INDIA

SEBI v. Burman Plantation and Others²

The counsel for SEBI contended before the Allahabad High Court that the business has been falsely charged since it was unable to fulfil its liabilities, including repayments towards its shareholders. When the corporation's ad was questioned, the council for SEBI stated that the ad was issued in 2003 and the warrant was made in 2004, so when corporation was unable to repay its obligations.

Furthermore, the sum of funds claimed by the shareholders was never mentioned. By modifying the provisions under section 24(1) of the SEBI Act, the counsel's principal claim

² SEBI v. Burman Plantation and Others, (2010) SCC 69

compelled legislators to enhance the penalty from one year to ten years, as well as the fine, which can now reach 25 crores. Finally, the culprit, Ravi Arora, was found guilty.

Abhay Singh Chautala v. C.B.I.³

In the given case a charge sheet was filed against the two appellants u/s 13(1)(e) and 13(2) of the prevention of corruption act, 1988. In a separate trial this section of PCA were read along with section 109 of IPC, 1860. Both defendants were serving in the Legislative Assembly and were charged of acquiring excessive wealth in relation to their salary while.

During the CBI investigation it was discovered that along with the appellants, the father of appellant had also acquired huge assets.

The High Court held that the appellant had provided a totally different office(s) of the accused than they were actually holding at that time. It was held by the High court that the office held by the accused were totally different from the one provided by the appellant. As a result, the penalty imposed under Section 19 of the Prevention of Corruption Act of 1988 was found to be invalid.

Binod Kumar v. State of Jharkhand & Others⁴

This case was brought against various ministers in the state of Jharkhand, as well as the Chief Minister, for having unaccounted for funds. The Centre was asked by the High Court to move the matter from the ED to CBI.

The ministers were suspected to be in custody of huge sums of cash, and despite the lack of proof to prosecute them with laundering money, a thorough inquiry was recommended.

The ministers were believed to hold land not just in our country but also in other countries. As a result, the court requested an inquiry to discover whether this riches was obtained by the abuse of a government position.

The CBI began its inquiry under the Prevention of Corruption Act, 1988, and the Indian Penal Code, 1860, because the Enforcement Directorate had sole authority to conduct investigations under the Prevention of Money Laundering Act, which is subject to the jurisdiction granted to the Centre under Section 45 (1-A) of the Act.

VII. MEASURE TO CURB WHITE COLLAR CRIMES

The following are some of the procedures that must be intended to mitigate white collar crime:

³ Abhay Singh Chautala v. C.B.I, (2011) SCC 1257

⁴ Binod Kumar v. State of Jharkhand & Others, (2011) CA 2689

- The country's main investigative agencies need to be strengthened by enacting robust regulatory laws. To maintain structural openness, the Central Vigilance Commission must supervise and cross-check the activities of employees in critical posts.
- The education of those who investigate white collar crimes should evolve as the methods for committing such offences are advancing . It is common for senior managers to have enough expertise to comprehend the structure and tactics of the job, yet they are unable to use equipment to hunt down the culprit. This occurs as a result of a lack of education and poor training. As a result, each investigating officer should be given such high level training and education that they can simply handle any situation, no matter how difficult it is.
- It is critical to put stringent restrictions in the system to eliminate the existence of such crimes. Because of the lower fines and shorter prison terms, offenders are more likely to perpetrate such crimes.
- Fast track tribunals and courts should be established around the country to expedite the resolution of these matters. The tribunal should have the authority to penalise or imprison those who have been found guilty. White collar crime rates would be reduced as a result of such actions.
- In order to create awareness about white collar crimes, the Internet and printing medium must be used effectively. The public in general needs to be mindful of these offences and understand that they could still occur anywhere, from a little cafe to large businesses. People should also be familiar with the legal options available to them if they become a target of these acts.
- Perpetrators must face strict regulations, large fines, and lengthy jail sentences if they commit these atrocities. And, in order to make that possible, the IPC, 1860, need be changed to contain white-collar crime prohibitions. White collar crimes should have their individual halter in the Indian Penal Code, 1860.
- The state may set up a distinct agency to investigate the issue of crime and criminality in our nation. This autonomous authority might be named as 'The National Crime Commission'. As they would be an autonomous group, they will be able to perform their work with more efficiency and effectiveness and hence help to reduce crimes in the our nation.

VIII. CONCLUSION

In fiscal year 2019-20, the SFIO completed investigations into 12 instances involving 361 businesses. In FY 2018-19, on the other hand, it had finished investigations into 12 cases involving only 83 firms. The SFIO is growing increasingly active in its primary duty of investigating corporate frauds, as evidenced by this contrast. However, there are still a large number of outstanding lawsuits involving the SFIO — particularly in cases where the inquiry and report have been delayed significantly.

Due to the complexity of financial fraud, a previous MCA Secretary stated that the SFIO has difficulty finding staff with the expertise to probe complicated scams. The SFIO's funds and people must be scaled up immediately in order to effectively implement Section 212.

Investigating officers must be prepared in order to learn how to take down such offenders; else, finding them down is complex, time-consuming, and exhausting task. Because white collar crimes are perpetrated by individuals with better socioeconomic class in their profession, the actions of the investigation authorities must be reviewed to maintain transparency.

The state should enact rules which are stringent enough to prevent such offences from being committed. As well as the mechanism must be set up so that not only are there rules that penalise the convicted harshly, but that the majority of cases are resolved quickly. Those will lose confidence in the government if something is not done, because these offences have been committed by individuals who ought to be role models for community.

The press has a vital part to play in slowing the rise of white-collar crime. The majority of white-collar crimes go undiscovered, according to reports. So, if the press becomes more involved in reporting fraudsters and scammers at elevated amounts and showing how men in higher positions in a firm utilise their authority inappropriately, as well as undertaking measures to enhance public awareness regarding white collar crimes and encourage individuals to ignore unethical behavior, this will undoubtedly assist to decrease the occurrence over which white collar crimes are perpetrated.
