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REVIEW ARTICLE

WHITE COLLAR CRIMES: A LEGAL CHALLENGE ON INDIAN CORPORATE SYSTEM

*Dr. Gyanendra Kumar Sahu

Department of Law, Utkal University, Bhubaneswar, Odisha

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ABSTRACT

White collar crimes form a separate category of criminal offences. The terms White collar crime and 'Economic Crime' are more often than not, used as synonyms in fact, both the terms need to be used to define different categories of crime. White collar Crimes not only victimize individuals with pecuniary loss but can also have serious repercussions on the Corporate System. White collar Crimes includes such as various financial scams, fraud, money laundering, tax evasion etc. are crimes which evoke serious concern and impact on the Corporate system. This paper seeks to present a perspective on the trend of Corporate crimes and legislative measures to deal with such crimes in India. The paper is divided into two sections. The first section gives different dimension of corporate crimes and the second section deals with relevant legislation to prevent the corporate sector from White collar crime.

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INTRODUCTION

There is a growing recognition in the world that the economic offences are part of other serious crimes posing serious threat to the security of the nation. Since the early 90's India has witnessed a spate of major economic scams in different sectors of the economy. The millions of small investors have lost thousands of crores of rupees, the economic crimes have caused havoc in the government managed institutions like Bank, Public Sector Undertakings, Telecom Department, Insurance Companies, etc. The magnitude and the new methods of committing economic crimes have been a cause of serious concern to the government as well as to the people. It is important in the first instance to understand the nature of White Collar Crime¹ or Corporate crime, as it is generally referred to, is a crime committed by a person of a certain social status in the course of his occupation. The economic crime occurs as a deviation from the violator's occupational role.

*Corresponding author: Dr. Gyanendra Kumar Sahu,
Department of Law, Utkal University, Bhubaneswar, Odisha, India.

¹ 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 with certain basic substantive and procedural principles of criminal law. In his landmark book, *White Collar crime*, first published in 1949, Sutherland dismisses the traditional mensrea (criminal intent) requirement and the presumption of innocence.

Also, most of the laws involved or violated are not part of the traditional criminal code. Such crimes are corruption, corporate fraud, public fraud, tax evasion, goods smuggling, stock manipulation, currencies forgery, credit card fraud, environmental crime, intellectual property infringement and the more recent phenomenon of cyber crime. Economic Crimes are not a new phenomenon in our country. Even one and a half century ago, when the Indian penal code 1860 was enacted, punishment was provided for cheating (Sec. 420)², Criminal Breach of Trust (Sec-409)³, Counterfeiting of Coins (Sec-232)⁴, making and selling of Adulterated Drugs

² Section 420. Cheating and dishonestly inducing delivery of property.--Whoever cheats and thereby dishonestly induces the person deceived to deliver any property to any person, or to make, alter or destroy the whole or any part of a valuable security, or anything which is signed or sealed, and which is capable of being converted into a valuable security, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine. Of fraudulent deeds and dispositions of property

³ Section 409. Criminal breach of trust by public servant, or by banker, merchant or agent.--Whoever, being in any manner entrusted with property, or with any dominion over property in his capacity of a public servant or in the way of his business as a banker, merchant, factor, broker, attorney or agent, commits criminal breach of trust in respect of that property, shall be punished with 1[imprisonment for life], or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

⁴ Section 232. Counterfeiting Indian coin.--Whoever counterfeits, or knowingly performs any part of the process of counterfeiting 3[Indian coin], shall be punished with 5[imprisonment for life], or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

(Sec.274⁵&275⁶), fraudulent use of Weights and measures (Sec.265)⁷, counterfeiting Govt. stamps and their sale (Sec. 255⁸ and 258⁹), making and selling of Fake Goods (Sec.481¹⁰ to 489¹¹), soon after the introduction of currency notes in our country, counterfeiting of the currency led to addition of section 489-A¹² and B in the Indian Penal Code in the year 1955. But what has changed in the past few decades is the

⁵ Section 274. Adulteration of drugs.-- Whoever adulterates any drug or medical preparation in such a manner as to lessen the efficacy or change the operation of such drug or medical preparation, or to make it noxious, intending that it shall be sold or used for, or knowing it to be likely that it will be sold or used for, any medicinal purpose, as it had not undergone such adulteration, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

⁶ Section 275. Sale of adulterated drugs.-- Whoever, knowing any drug or medical preparation to have been adulterated in such a manner as to lessen its efficacy, to change its operation, or to render it noxious, sells the same, or offers or exposes it for sale, or issues it from any dispensary for medicinal purposes as unadulterated, or causes it to be used for medicinal purposes by any person not knowing of the adulteration, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

⁷ Section 265. Fraudulent use of false weight or measure.-- Whoever, fraudulently uses any false weight or false measure of length or capacity, or fraudulently uses any weight or any measure of length or capacity as a different weight or measure from what it is, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

⁸ Section 255. Counterfeiting Government stamp.-- 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 1[imprisonment for life] or with 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 stamps of one denomination to appear like a genuine stamp of a different denomination.

⁹ Section 258. Sale of counterfeit Government stamp.-- 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 with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

¹⁰ Section 481. Using a false property mark.-- Whoever marks any movable property or goods or any case, package or other receptacle containing movable property or goods, or uses any case, package or other receptacle having any mark thereon, in a manner reasonably calculated to cause it to be believed that the property or goods so marked, or any property or goods contained in any such receptacle so marked, belong to a person to whom they do not belong, is said to use a false property mark.

¹¹ Section 489. Tampering with property mark with intent to cause injury.-- Whoever removes, destroys, defaces or adds to any property mark, intending or knowing it to be likely that he may thereby cause injury to any person, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.] 1[Of currency- notes and bank- notes

¹² Section 489A. Counterfeiting currency- notes or bank- notes.-- Whoever counterfeits, or knowingly performs any part of the process of counterfeiting, any currency- note or bank- note, shall be punished with 2[imprisonment for life], or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine. Explanation.- For the purposes of this section and of sections 489B, 3[489C, 489D and 489E], the expression "bank- note" means a promissory note or engagement for the payment of money to bearer on demand issued by any person carrying on the business of banking in any part of the world, or issued by or under the authority of any State or Sovereign Power, and intended to be used as equivalent to, or as a substitute for money.

magnitude and enormity of economic crimes owing to the development in technology and improved means of transport and communication and their use by the perpetrators of these crimes.

Different structure of Corporate Crime

Economic offenders have exploited weaknesses in almost all areas of economic activity and siphoned off thousands of cores. Their depredations will continue till the law makers plug loopholes in the affected system. But the economic offenders, as they have the knack of exploiting weaknesses in any system either traverse a new territory or subvert the system which is their specialized field. In the recent past alone, scams have cost the exchequer and millions of Indians, astronomical sums of money. Some major corporate scams / economic offences, which have adversely affected out national economy in the recent past, are:

(i) Money Laundering

Money Laundering has a close nexus with organized crime. Money laundering is the process by which large amount of illegally obtained money (from drug trafficking, terrorist activity or other serious crimes¹³) is given the appearance of having originated from the Legitimate source. But in simple terms it is the conversion of black money into white money¹⁴. This takes one back to cleaning the huge piles of cash. If done successfully, it allows the criminals to maintain control over their proceeds and ultimately to provide a legitimate cover for their source of income." Whosoever directly or indirectly attempts to indulge or knowingly assists or knowingly is a party or is actually involved in any process or activity connected with the proceeds of crime and projecting it as untainted property shall be guilty of offence of money laundering" Money laundering has an adverse impact on economy and political stability of country and hence such an activity must be curbed with an iron hand. Therefore, nations of the world must join hands and adopt measures to dismantle syndicates engaged in money laundering by resorting to aggressive enforcement of law. By way of money laundering could contaminate and corrupt the structure of the State at all levels, this definitely leads to corruption. Further, this adds to constant pursuit of profits and the expansion into new areas of criminal activity.

(ii) Insider Trading

Corporate insiders are defined as a company's officers, directors and any beneficial owners of more than 10% of a class of the company's equity securities. Trades made by these types of insiders in the company's own stock, based on material non-public information, are considered to be fraudulent since the insiders are violating the fiduciary duty that they owe to the

¹³ Gupta, Dr. Anuradha: Money Laundering and Financing of Terrorism-A Study on Methods to Fight Money laundering in India and USA, Journal of the Institute of Chartered Accountants of India, volume 58, No.10, APRIL 2010

¹⁴ Description of Money Laundering and Terrorist Financing", Available online
<<http://www.gamblingcontrol.org/userfiles/file/bs.pdf>.

shareholders. When the insider buys or sells based upon company owned information, he is violating his obligation to the shareholders¹⁵. However, "insiders" are not just limited to corporate officials and major shareholders where illegal insider trading is concerned but can include any individual who trades shares based on material non-public information in violation of some duty of trust. This duty may be imputed; for example, in many jurisdictions, in cases of where a corporate insider "tips" a friend about non-public information likely to have an effect on the company's share price, the duty the corporate insider owes the company is now imputed to the friend and the friend violates a duty to the company if the corporate insider trades on the basis of this information¹⁶. Insider trading has been quite rampant in the recent past. Regulatory efficacy is often questioned when insiders are caught while exploiting private information through insider trading. Emergence of new cases of insider exploitations, even under tight insider trading laws, resonates the mixed empirical evidence in the literature.

In the case of United states of America vs Rajat K.Gupta : The Court is called upon to impose sentence on Rajat K.Gupta, who on June 15, 2012, was found guilty by a jury of one count of conspiracy and three counts of substantive securities fraud, in connection with providing material non-public information to Raj Rajaratnam.

(iii) Primary Market Frauds

The Stock Market Scams of 90's affected millions of small investors across the country. Fly-by-night operators entered the primary markets and through initial public offers (IPOs)¹⁷, collected hundreds of cores and vanished! The irony is that the whereabouts of over 100 companies are still not known either to SEBI or to the other investigating agencies. Even those companies, which did not vanish, used the people's money for purposes other than for which it was collected. As a result, the value of their shares plummeted resulting in heavy losses to the investors¹⁸.

Case Law

Sahara India Real Estate Corporation Ltd. (SIRECL) and the Sahara Housing Investment Corporation Ltd. (SHICL) vs SEBI

"Initially to incorporate the company SIRECL and SHICL, The company offered fully convertible debenture of Rs 24,400 crores in 2008-2009. The offer was made to "friends, associates, group companies, workers/ employees and other individuals associated/affiliated or connected in any manner

¹⁵ Aboody, D., and B. Lev, 2000. Information asymmetry, RD, and Insider Gains. *The Journal of Finance* 55.

¹⁶ One recent example of such activity is the celebrated insider trading case where Rajarathinam, a hedge fund manager, was caught by the US market regulator SEC, for making a quick round trip transaction while trading on Goldman Sachs stock before their public announcement of Warren Buffet's purchase of Goldman Sachs stock.

¹⁷ Deb.S., Marisetty, B.V, 2010. The information content of IPO grading. *Journal of Banking and Finance* 34, 9, 2294-2305

¹⁸ Marisetty.V.B., and Subrahmanyam.M.G, 2010. Group affiliation and the performance of IPOs in the Indian stock market, *Journal of Financial Markets* 13, 196-223.

with Sahara India Group of Companies" But The total no of persons in reality turned out to be nearly 2.21 crores and address of these investors were not traceable. In fact no of Bogous A/c was opened and issued the debenture and these debenture subsequently issued to the Innocent investors. But finally on 31st Aug, 2012 Honorable Supreme Court delivers the judgment against Sahara and asks the above mentioned two companies to pay the collected amount i.e. Rs 24, 400 Crore + 15% Interest to its 2.21 Crore investors."

(iv) Bank Frauds

Economic offenders have targeted nationalized and cooperative banks and siphoned off thousands of cores by having criminal nexus with the managements of the banks. The big borrowers alone are responsible for the huge non-performing assets of the nationalized banks. In the 90's unscrupulous economic offenders set up large number of UCBs (Urban Cooperative Banks) in the states of Andhra Pradesh, Maharashtra, Gujarat and collected thousands of cores by offering unsustainable high rate of interest and later siphoned off hundreds of cores either by sanctioning loans to themselves, or to the borrowers with whom they had criminal nexus. Naturally such banks collapsed, which caused havoc to the millions of small investors.

(v) Import / Export Frauds

Money laundering operations by under-invoicing imports and over-invoicing of exports have been resorted to by unscrupulous traders in a big way and thereby converted their black money into white and, obtained liberal incentives given by the Government in the form of exemption of income tax on the earnings, etc. this is in addition to import/export frauds being committed based on forged and fictitious documents.

(vi) Insurance Frauds

Insurance companies have been victims of frauds perpetrated by unscrupulous claimants with or without the active connivance of insurance officials. Instances of deliberately setting fire to the insured goods, go-downs, factories, making more than one claim on the basis of same accident, inflated claims supported by corrupt surveyors, are quite common.

(vii) Fake Currency

Large scale circulation of fake currency can undermine the economy, as well as national security of any country. In India, the problem is age old, but with the development in technology, high quality fake currency notes have been recovered from terrorists, who had come from across the border. Fake currency printed abroad is generally channelised into India through Nepal and Dubai. Besides high quality fake currency notes being pumped into the country from across the border, criminal gangs and individuals within the country an remaking use of computes and sophisticated printers in making fake currency notes.

Since the problem has national as well as international dimensions, it needs to be tackled effectively by the RBI, CBI and State Police Forces.

(viii) Fake Stamps Scam

A multi core fake stamps racket operated by Abdul Karim Telgi throughout the length and breadth of the country for many years with the active collusion of Police, Security Press and officials of banks and insurance companies exposed vulnerability of the system. The extent of the revenue loss caused to the exchequer by this gang alone is being estimated to the tune of Rs. 25,000 cores. Since there are many other gangs also engaged in different parts of the country, the problem needs to be dealt with in a pro-active and holistic manner.

Legislative Measures to prevent White Collar Crimes

There are a number of regulations in place to control Corporate criminal activities. These are:

1. Prevention of Corruption Act, 1988
2. SEBI Act, 1992
3. Insurance Act, 1938
4. Central Vigilance Commission Act
5. Banking Regulation Act, 1949
6. Reserve Bank of India Act, 1934
7. Code of Criminal Procedure act 1973
8. The telecom Regulatory Authority of India Act 1997
9. Value Added Tax Act, 2005.
10. Indian Companies Act, 1956
11. Public Accountants and Auditors Act,
12. Indian penal code: 1860
13. Prevention of money laundering Act 2002.
14. Right to Information Act 2005
15. Lok ayukta Acts of the state

Conclusion

Despite a slew of measures taken by the Governments there is neither decline in overall volume of White collar crimes, nor reeducation in the number of major scams that are occurring with regular frequency in the country. In fact, the menace of white collar crimes has assumed serious proportion, which needs to be addressed with a holistic approach. The following measures are recommended:

The Laws governing economic offences are soft as compared to the laws enacted to deal with violent crimes like murders, dacoities, etc. Therefore, all the laws relating to economic offences need to be reviewed and revamped. The state should also engage prosecutors with sound knowledge of law and impeccable integrity, to ensure that the economic offenders are not released on bail the bail provision must be tightening. For a variety of reasons, the inordinate delay in conducting trial, investigation, inquiry, appeal, revision, retrial, lost of evidence, lapse of time and other factors Whatever may be the reason, it is justice that becomes casualty. The courts in India are not able to dispense justice promptly. One of the principal reasons is heavy backlog of cases. Therefore, there is need to create exclusive courts to bring offenders to book quickly also there is need to simplify court procedure and ensure that economic offenders are not allowed to subvert the system the Government establishes a special penal code for preventing White collar Crime.

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