

# Judicial Approach towards White Collar Crimes in India

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**Abstract:** *White Collar Crimes are the crimes committed by the people of high social status and respectability during their course of their occupation. Some of the examples of white collar crimes are corruption, food adulteration, forgery, cyber crimes etc. In order to deal with these white collar crimes, The Indian Penal Code, 1860 is one of the most exhaustive and classified criminal law in India. Other than The Indian Penal Code, 1860 various acts were enacted to deal with these types of white collar criminals. Thus, this paper throws a light on the acts which were enacted to punish the white collar criminals.*

**Keywords:** White Collar Crimes, Cyber Crimes, Lokpal, Corruption

## 1. Introduction

The thought of "white collar crime" was first presented in the field of criminology by Prof. Edwin H. Sutherland in the year 1939 who has promoted the term 'white collar crimes' by characterizing such crimes as one "committed by a person of respectability and high social status in the course of his occupation".<sup>1</sup> Sutherland also involves crimes committed by corporations and other lawful substances inside his definition. The main classes of white-collar crimes are corruption, food and drug adulteration, counterfeiting, forgery, tax-evasion, cyber crimes, money laundering and so on. The Indian Penal Code, 1860 is the most punctual exhaustive and classified criminal law of India. In any case, the social and monetary structure of India has changed to such a huge degree that in numerous regards the Code does not genuinely mirror the necessities of the present day. Other than the Indian Penal Code, 1860 which give some fundamental standards identifying with white collar crime, such as cheating, counterfeiting, breach of trust, fraud and forgery, there are many different authorizations explicitly intended to manage office violations, for example, The Prevention of Food Adulteration Act, 1954; The Prevention of Corruption Act, 1988; The Transplantation of Human Organs Act, 1994; Information Technology Act, 2000; The Prevention of Money Laundering Act, 2002; The Food Safety and Standards Act, 2006; The Lokpal and Lokayukta Act, 2013 and so forth.<sup>2</sup>

### 1.1 The Prevention of Food Adulteration Act, 1954

Food is one of the essential necessities for the sustenance of life. A pure, fresh and solid eating routine is most fundamental for the health of the general population. It is no big surprise to state that people's health is national wealth. Adulteration of food-stuffs was so uncontrolled, far reaching and persistent that there was an immediate need to enact law regarding the problem. An essential advance towards the tending to the issue of food adulteration was done in the year 1954 by sanctioning central enactment regarding the matter

keeping in view breaking points of the Indian Penal Code, 1860. For instance, it doesn't cover the blending of the substances that are not harmful as water in milk and stone and sub-par quality grain in pulses. The first legislative measure to combat the menace of adulteration in food stuffs and to protect consumer's health and happiness was taken under the Indian Penal Code, 1860. The objects and the need behind the Act are to dispose the dangers to human life from sale of unwholesome article of foods. It is authorized to control the evil of food adulteration and is authoritative measure for social Defense. It is expected to put an end on socio-economic harm, an evil that endeavors to harm, for money related increases, therefore, it is a source of substance of life and well-being of the society. The Act accommodates a Central Food Laboratory to which food tests can be referred for final opinion in debated cases and the Central Committee for Food Standards. The central government is vested with the rule making power. According to the need, the Act was revised multiple times- 1964, 1971, 1976 and 1986. **It is appropriate to specify here that the Prevention of Food Adulteration Act, 1954 was repealed by the Food Safety and Standards Act, 2006.**

The Prevention of Food Adulteration Act, 1954 was made to:<sup>3</sup>

- 1) Prevent adulteration and misbranding of foods;
- 2) Punish the food adulterators adequately;
- 3) Secure purity of food to maintain public health;
- 4) Regulate to some extent the consumer-supplier relations;
- 5) Warm producers or manufactures of food to ensure safety in realm of food;

### 1.2 The Food Safety and Standards Act, 2006

The Food Safety and Standards Act, 2006 is intended to consolidate the laws relating to food and to establish the Food Safety and standards Authority of India for laying down science based standards for articles of food and regulate their manufacture, storage, distribution, sale and import to ensure availability of safe and wholesome food for

<sup>1</sup> S.M.A.Qadri - *Criminology, Penology and Victim logy* p.320 (Eastern Book Company, Chandigarh, 7<sup>th</sup>edn, 2016).

<sup>2</sup> N.V.Pranjape - *Criminology and Penology and Victim logy* p.145 (Central Law Publications, Allahabad, 17<sup>th</sup> edn, 2017).

<sup>3</sup> Dr.S.R. Myneni - *Crime and Criminology* p. 197 (Allahabad Law Agency, Faridabad, 1<sup>st</sup>edn, 2017).

human consumption and for matters connected therewith or incidental thereto.<sup>4</sup>

### 1.3 General Principles of Food Safety

According to Section 18 of the Act, coming up next are the General Principles of Food Safety;<sup>5</sup>

- 1) endeavour to achieve an appropriate level of protection of human life and health and the protection of consumer's interests, including fair practices in all kind of food trade with reference to food safety standards and practices;
- 2) Carry out risk management which shall include taking into account the results of risk assessment, and other factors which in the opinion of food Authority are relevant to the matters under consideration and where the conditions are relevant, in order to achieve the general objectives of regulations;
- 3) Where in any specific circumstances, on the basis of assessment of available information, the possibilities of harmful effects on health is identified but scientific uncertainty persists, provisional risk management measures necessary to ensure appropriate level of health protection, may be adopted, pending further scientific information for a more comprehensive risk assessment;
- 4) The measures adopted on the basis of clause (c) shall be proportionate and no more restrictive of trade than is required to achieve appropriate level of health protection, regards being had to technical and economic feasibility and other factors regarded as reasonable and proper in the manner under consideration;
- 5) The measures adopted shall be reviewed within a reasonable period of time, depending on the nature of the risk to life or health being identified and the type of scientific information needed to clarify the scientific uncertainty and to conduct a more comprehensive risk assessment;
- 6) Where any food which neglects to comply with food safety requirements is a part of a group, lot, or dispatch of food of the same class or description, it will be assumed until the opposite is same class or description, it shall be presumed until the contrary is proved, that all of the food in that batch, lot or consignment fails to conform with those necessities.

A. The Food Authority will, while framing guidelines or determining principles under this Act-

- a) Take into record –
  - Prevalent practices and conditions in the nation including agricultural practices and taking care of, capacity and transport considerations; and
  - International standards and practices, where international standards or practices exist or are in the process of being formulated, unless it is of opinion that taking into account of such prevalent practices and conditions or international standards or practices or any particular part thereof would not be an effective or appropriate means for securing the objectives of such regulations or where there is scientific justification or

where they would result in a different level of protection from the one determined as appropriate in the country;

- b) Determine food guidelines based on the risk analysis with the exception of where it is of view that such analysis isn't suitable to the conditions or nature of the case;
- c) Undertake risk evaluation dependent on the accessible scientific evidence and in an freely, objective and straightforward way;
- d) Ensure that there is open and transparent public consultation, directly or through representative bodies including all levels of panchayats, during the preparation, evaluation and revision of regulations, except where it is of opinion that there is an urgency concerning food safety or public health to make or amend the regulations in which case such consultation may be dispensed with:

Given that such guidelines will be in force for not more than six months;

- a) Ensure assurance of the interests of the buyers and shall provide a basis for consumers to make informed choices in relation to the food they consume;
- b) Ensure avoidance of-
  - Fraudulent, tricky or unreasonable exchange trade practices which may mislead or harm the consumer; and
  - Unsafe or contaminated or unsatisfactory food.
- c) The provision of this Act will not have any significant bearing to any farmer or fisherman or cultivating tasks or yields or animals or aquaculture, and supplies utilized or created in cultivating or results of harvests delivered by a farmer at farm level or fisherman in his activities.<sup>6</sup>

### 1.4 The Prevention of Corruption Act, 1988

Prevention of corruption is one of the issues which our nation has been looking from a long time. Corruption delays our nation's development and welfare to the greater extent. According to Stroud's Judicial Dictionary<sup>7</sup> corruption implies moral obliquity or good perversity. Corruption means that something is left from the original one. In India the first classified criminal law for example the Indian Penal Code, 1860 contained a full chapter which deals with corruption. Therefore, it confined its operation to define public servants under section 21 of the Indian Penal Code, 1860. For the most part unfortunate behavior and misuse of power by public servants were provided under this Code. Being represented in the conventional rule of criminal liability the provisions in the Indian Penal Code, 1860 couldn't effectively fight corruption by public servants who established a ruling class which has an impressive impact for tilting the scale of justice. Besides, the meaning of public servants experienced numerous faults the same numbers of essential functionaries occupied with releasing public justice were out for the meaning of public servants. The extent of bribery and corruption by public servants had greatly expanded because of First World War Indeed, even after the

<sup>4</sup> Dr.S.R. Myneni – *Crime and Criminology* p. 83 (Allahabad Law Agency, Faridabad, 1<sup>st</sup>edn, 2017).

<sup>5</sup> The Food Safety and Standards Act, 2006.

<sup>6</sup> The Food Safety and Standards Act, 2006, available at <https://indiankanoon.org/doc/1463694/> last visited on March 3, 2019.

<sup>7</sup> Strouds F, *The Judicial Dictionary* 172 (1890).

Second World War chances for the corrupt practices remained for the greater time. Dynamic plans for post war remaking opened wide new avenues for corruption among public servants. However, the current provisions of the Indian Penal Code, 1860 were observed to be inadequate for effective handling of corrupt public servants. Therefore to supplement and fortify law against corruption, the Prevention of Corruption Act, 1947 was established. The Act being a social enactment aimed for destroying corruption changed the customary principle of criminal liability by assuming mens-rea with respect to the public servant if acts-reus was demonstrated. Criminal misconduct in release of official obligation was made an offense under section 5 of the Act.<sup>8</sup> However it neither gave separate meaning of public servants nor made any enhancements in section 21 of the Indian Penal Code, 1860. In pursuance of the Santhanam Committee<sup>9</sup> for taking stringent measures against corruption, the Act was changed in 1964. In spite of the changes in the Act, the circumstance vitiated by corrupt practices couldn't be saved. Rather corruption expanded its circle of movement by immersing the whole society.

The Prevention of Corruption Act, 1988 has taken the place of The Prevention of Corruption Act 1947, and it has also included section 161 to 165 of Indian Penal Code, 1860.<sup>10</sup> The new act has also been imagined as a comprehensive legislation for the prevention of corruption in India by extending its scope and smoothening procedural and related issues.

The Act of 1988 has mainly adopted the modern changes in the concept of corruption as now understandable in criminal law. Political corruption is also stated under this Act. The Act has adopted the independent meaning of public servants under section 2(e) of the Prevention of Corruption Act, 1988. The definition stated under section 21 of the Indian Penal Code, 1860 is no more applicable on the Act as was mentioned under the Prevention of Corruption Act, 1947. The definition of public servant under section 2(c) especially under sub-section (ii), (iii), (vii) and (ix) has covered political corruption as elected representative such as MP, MLA, MC, the Chairman of Corporation are now public servants.

### 1.5 The Prevention of Money Laundering Act, 2002

Money Laundering<sup>11</sup> refers to the changing or "Laundering" of money which is wrongfully acquired, in order to show that it is acquired from a lawful source. Popularly this is known as making black money white. Money Laundering is being utilized by launderers worldwide to cover crime related with it such as drugs/arms trafficking, terrorism and extortion. The Prevention of Money Laundering Act, 2002<sup>12</sup> states money laundering as 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 proceeds of crime including its concealment possession, acquisition or use and projecting it as untainted property shall be guilty of offence of Money Laundering. Thus Money Laundering is not an independent illegal act, it relies on another crime (predicated offence), identifies earnings of which the subject matter of the crime is Money Laundering. From the lawful perspective, the Achilles 'Heel in characterizing and condemning money laundering identified with the alleged 'predicated offence' comprehended as the criminal offenses which generated the earnings thus making laundering important. Covering up or disguising the source of certain earning will not amount to money laundering unless these earning are obtained from an illegal activity. Therefore, what exactly premise to money laundering which activity and who can be indicted is to a great extent reliant on what comprises predicate crime for the motive of money laundering.<sup>13</sup>

**To acquire the vital changes in light of the progression of economy and securities market in India, there was a need to progressively anti-money laundering law and that is how the Prevention of Money Laundering (Amendment) Act 2012<sup>14</sup> came into existence.**

#### Main Objectives of the Act

- 1) To prevent, combat and control money laundering
- 2) To protect the company from being used for money laundering
- 3) To confiscate and seize the property obtained from the laundered money
- 4) To have a proper Customer Due Diligence (CDD) process before registering clients.
- 5) To Monitor/maintain records of all cash transaction of the value of more than RS. 10 Lakhs.
- 6) To maintain records of all series of integrally connected cash transactions within one calendar month
- 7) To monitor and report suspicious transaction.
- 8) To discourage and identify money laundering or terrorist financing activities.
- 9) To take adequate and appropriate measure to follow the spirit of the PMLA.

### 1.6 The Information Technology Act, 2000

We are in period of Information Technology. The appearance of Information Technology disclosure has seen ascent of an IT society with an IT culture. In less than half a century the advancement of it has been gigantic with its incorporate being from Raja to Praja's Sovereign to subject. There is not really any territory which has been left immaculate by it, from support to incineration IT has an essential role and as a substitute to human exercises, it is deeply establishing and impacts our ordinary every day to day activities. In addition to countries like the U.S. Singapore, France, Malaysia and Japan, India is the twelfth country to have cyber legislation. The internet is developing rapidly. It has offered this to new opportunities in each field we can consider be it entertainment, business, sports or

<sup>8</sup> Section 5 of The Prevention of Corruption Act 1988.

<sup>9</sup> Government of India Report, *The Committee on Prevention of Corruption [Ministry of Home Affairs, 1964]*

<sup>10</sup> Section 31 of The Prevention of Corruption Act 1988.

<sup>11</sup> Section 2(1) (p) of The Prevention of Money Laundering Act, 2002

<sup>12</sup> Section 3 of the Prevention of Money Laundering Act, 2002

<sup>13</sup> K.D. Gaur - *Criminal law and Criminology* p.285 (Universal law Publishing – An Imprint of Lexis Nexis, Delhi, 2003).

<sup>14</sup> hereinafter referred as Prevention of Money Laundering (Amendment) Act, 2012

education. Anyway there are dependably an opposite sides to a coin, cyber crime (illegal activity committed on the internet) is one of its major negative point. The internet along with its numerous points has additionally presented us to security risks that accompany associating with an extensive system. Computers today are being abused for unlawful exercises like-e-mail espionage, credit card fraud, spam, software piracy, in evident feeling of the term it does invade our privacy and offend our senses. Crimes in the Cyberspace are on the ascent. The modern thief can steal more with a computer than with a gun. Tomorrow's terrorist might probably accomplish more harm with a console than with a bomb. . To additionally disturb the issue, criminals understanding the effectiveness of computers and the internet to successfully execute conventional crime, are increasingly resorting to using them as tool for committing such crimes.<sup>15</sup>

The Indian parliament thought of it as important to offer impact to the goals by which the General Assembly received Model law on Electronic Commerce embraced by the United Nations Commission on Trade Law. As an outcome of which the Information Technology Act, 2000 was passed and upheld on 17 May 2000.<sup>16</sup>

#### Main objects of the act-

The fundamental object of the Information Technology Act 2000 is to give lawful acknowledgment for transactions carried out by methods of electronic data interchange and other different methods of electronic communication, generally referred to as "electronic commerce", which include the utilization of choice to paper-based strategies of communication and capacity of data, to encourage electronic recording of reports with the Government organizations and further to alter the Indian Penal Code, the Indian Evidence Act, 1872, the Bankers' Books. Evidence Act, 1891 and the Reserve Bank of India Act, 1934 and for matters connected therewith or incidental thereto.<sup>17</sup>

#### 1.7 The Lokpal and Lokayuktas Act, 2013

The thought of an ombudsman to inquire the issues of corruption was first introduced in 1968 in the fourth Lok Sabha. After that endeavors were made to make this theoretical thought a reality in 1971, 1977, 1985, 1989, 1996, 1998 and 2001. However, these undertakings remained to a great extent ineffective inferable absence of political will. In 2010-11, these endeavors achieved its zenith when a social worker Anna Hazare went on a fast until death in order to enact the Act regarding the establishment of the organization of Lokpal. The public support that Anna Hazare had influenced the government to surrender and a joint committee consisting of delegates of government and common society were formed to draft the bill. However no consensus could be accomplished and the administration moved its version of the bill in the Lok

Sabha. The bill was assessed by the Parliamentary Standing Committee on Law and Justice and passed by the Lok Sabha. The bill was referred to the Select Committee in the upper house and corrected based on its proposals. Accordingly, the Lokpal and the Lokayuktas Act, 2013 was enacted. It is important to mention here that The Lokpal and the Lokayuktas Act were amended in 2016.

## 2. Conclusion

The continued discussion clarifies that white collar crimes are expanding particularly with changes in innovation. White collar crimes are more threatening to society than conventional crimes, firstly because the monetary loss is high, and secondly, because of the harm caused on public morale. White collar crimes are not kept in limits of any nation and have become a global problem. In India the Indian Penal Code, 1860 gives some essential standards identifying with relating to white collar crimes such as cheating, counterfeiting, and breach of trust, fraud and forgery. However there are quite a few other enactments specifically made in order to handle the issue of white collar crimes. After analyzing the provisions of various laws we may conclude that we have got many laws on almost every aspect of public life of our country. An analysis of some of the important laws states that implementation of these laws is less due to lack of will of people in general as well as politicians and bureaucrats in particular. To deal with the menace of white collar crimes, amendments in the existing laws are necessary, but at the same time we must not forgot that it is the social, economic and political conditions which will be responsible for proper enforcement of these laws. At this present juncture what we need is the strengthening of our enforcement agencies such as the Central Bureau of Investigation, the Enforcement Directorate, The Directorate of Revenue Intelligence, the Income-tax Department and the Customs Department.

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<sup>15</sup> Dr.Jyoti Rattan and Dr.Vijay Rattan – *Cyber law and Information Technology* p.13 (Bharat Law House, Pvt.Ltd, New Delhi, 6<sup>th</sup> edn, 2017).

<sup>16</sup> Ibid.

<sup>17</sup> Dr.Jyoti Rattan and Dr.Vijay Rattan – *Cyber law and Information Technology* p.76 (Bharat Law House, Pvt.Ltd, New Delhi, 6<sup>th</sup> edn, 2017).