

## **White collar crime in the medical field: A study in India and International perspective**

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Public outcry can be seen these days, specially, against the socio-economic offences (likes- food adulteration, wide spread corruption, huge scams of billions of rupees and unaccounted black money of the few people stashed in foreign banks etc). India has become a fertile land for the corruption. New scam is coming to light every day. News papers and news channels are full of the stories related to the corruption in high ranked officials. The representatives of the people and the ministers in the state and the central Governments are involved in the huge scams. The reasons for the failure of the governments to check corruption is, therefore, not far to seek. Whatever attempts are made of the investigation, it appears, they are made half-heartedly and to cover up the scams. In the recent past, the entire session of the parliament has been wasted by the government and the opposition only in confrontation over the refusal of the ruling party to appoint Joint Parliamentary Committee (JPC) on 2G scam which later on it agreed to set up but having caused colossal loss to the nation by way of depriving it of a full debate on burning issues in the Parliament. Sincere attempts are not being made to deal effectively with massive corruption. Doubts have been raised without much basis by the government functionaries on the correctness of the CAG report on the 2G scam and the intention behind this seems to be to nullify the scathing observations made against the government in the CAG report. People are expressing serious doubts as to whether finally anyone will be held guilty for the economic offences which have been committed<sup>1</sup>.

Judicial process is cumbersome and long delays in deciding such matters become inevitable because of dilatory tactics of the parties. Further, laws are not adequately stringent against the socio-economic offences. It is important, therefore, to critically examine the law relating to corruption in India as in vogue, and see whether in its present form its continuance can be allowed and what measures need to be taken to make it robust and deterrent if the menace of corruption is to be eradicated from the Indian public life.<sup>2</sup>

The concept of white collar crimes has been given by E.H. Sutherland, a noted criminologist. He studied in United States in late 1930s the business crimes, professional crimes and crimes by the medical practitioners in the course of their occupation which he classified as white collar crimes i.e. crimes

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<sup>1</sup>Planning Commission, Annual report 2013-2014.

<sup>2</sup>Supreme Court vs Union Of India on 16 October, 2015

committed by well to do members of the society to make riches at the cost of human deprivations in the course of their occupation. This study will examine the applicability of the concept of white collar crimes as stated by Sutherland in the Indian perspective.

Socio-economic offences are distinct from the traditional crimes such as murder, rape, theft, dacoity, trespass, assault and like. The consequences which follow after the commission of these offences impact the social and economic fabric of society as a whole. As a result, the foundation of law on which the society and its economy stands comes under direct threat. The victim in the case of socio economic offences is not an individual or a select group but the society and the state as a whole. These crimes are perceived differently in our society. It may be due to the reason that damage caused by such crimes is not immediately noticed. Often, the reaction to such crimes is mild unlike traditional crimes like murder or sexual crimes where the public expression of disapproval is often strongly put across to the people administering justice.

Common human weakness viz. greed is seen as the motive behind socio economic offences. Horace, the Roman poet once had remarked, '*He who is greedy is always in want.*' (65 B.C. to 8 B.C.). Wisdom tells that avarice knows no bounds. It is the prime motive in such offences.<sup>3</sup> Traditional crimes were seen as deviant behavior of people coming from lower strata of society. They carried stigma which is absent in the case of socio economic offences. Socio economic offences are understood to be committed by well heeled, rich or the elite people in the society. They are people with money, who desire more money.<sup>4</sup> They corrupt the functionaries of law to acquire more and more wealth. As a result, they end up corrupting the social atmosphere which injures the economy of a nation. It demoralizes honest official functionaries and induces decay in the society.

## CHAPTER I INTRODUCTION

The 29th Law Commission Report of India enumerated the following factors responsible for the increase of white-collar criminality in India: -The advances of technological and scientific development are contributing to the emergence of 'mass society'. With a large rank and file and a small controlling elite, encouraging the growth of monopolies, the rise of managerial class and intricate institutional mechanism.

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<sup>3</sup><https://www.britannica.com/biography/Horace-Roman-poet>.

<sup>4</sup><http://14.139.60.114:8080/jspui/bitstream/123456789/4251/1/30%20Socio-Economic%20Offences.pdf>.

The inability of all sections of society to appreciate in full, this need results in emergence and growth of white-collar and economic crimes<sup>5</sup>.

Various statutes have been passed to check the disease of white collar crimes, an outline of which is given hereunder:

- Offences under the Narcotic Drugs and Psychotropic Substances Act, 1985 (Contravention in relation to opium poppy and opium).
- Offences under India Penal Code, 1860 (part B) (Counterfeiting currency notes or bank notes).
- Offences under the Wildlife (Protection) Act, 1972 - e.g. Contravention of provisions of section 48 relating to purchase of animals etc by license.
- Offences under the Prevention of Corruption Act, 1988 - e.g. taking gratification for exercise of personal influence, with public servant.

In addition to the provisions of IPC/Cr.P.C., so many special laws are in force, which aim to check the white-collar criminals. It is well known that white-collar criminals are much more dangerous to society than ordinary or blue-collar criminals. The question then arises as to why many white-collar criminals go unpunished.

The Supreme Court indicated its policy regarding the punishment of white-collar crimes in the context of corruption by public servants in *Som Prakashv. State of Delhi*<sup>6</sup>. Severe punishment must be prescribed to root out such social danger. It was said that though all-intensive efforts to track down bigger criminals were needed; courts could not slow down because bigger criminals were to be caught.

The Supreme Court in *VineetNarain and Others vs. Union of Indiaand Another*<sup>7</sup>, had directed that the Central Vigilance Commission (CVC) be given statutory status. Selection for the post of Central Vigilance Commissioner shall be made by a Committee comprising the Prime Minister, Home Minister and the Leader of the Opposition from a panel of outstanding civil servants and others with impeccable integrity to be furnished by the Cabinet Secretary. The appointment shall be made by the President on the basis of the recommendations made by the Committee. This shall be done immediately. These directions were made so that the corruption in the high ranked officers and the government servants should be able to deal with effectively. Central Vigilance Commission Act of 2003 was passed with the said objectives. The appointment of CVC came in great controversy before the Supreme Court in recent “2G Spectrum scandal” case.<sup>8</sup>

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<sup>5</sup>29th Law Commission Report of India.

<sup>6</sup> (1974) 4 SCC 84.

<sup>7</sup> (1998) 1 SCC 226.

<sup>8</sup>[http://www.commoncause.in/publication\\_details.php?id=125](http://www.commoncause.in/publication_details.php?id=125).

This study will highlight some of these biggest scandals in Indian history and will try to find out why all the mechanisms so far have failed to deal with these scandals. Attempt has been made to confine the present study in critically analysing the scheme of CVC Act of 2003, the Prevention of Food Adulteration Act of 1954 and the Prevention of Corruption Act of 1988, given the constraint of time to complete this study.

### **DEFINITION:**

For all the attention white-collar crime has been receiving recently, Apart from the media, the following academic works are just some example of the current interest in the subject: White-Collar and Corporate Crime; Friedrichs, *Trusted Criminals*; Klaus, *Forging Capitalism*; Balleisen, *Fraud*; Berghoff, Rauh, and Welskopp, *Tatort Unternehmen*; Baker and Hahn, *Cotton Dings*; Shover and Hochstetler, *Choosing Whitelist Crime*. View all notes no generally accepted scholarly definition of this subject exists. In this issue, we will use the terms 'white-collar crime' and 'economic crime' interchangeably. To circumvent the arduous task of crafting a reasonably useful definition, many authors take refuge to a non-systematic case-by-case approach and work with a list of relevant crimes. Historically, it took a long time to categorise this kind of malfeasance under the rubric of crime, because people who committed white-collar crimes were not perceived as 'typical criminals' who engaged in theft, manslaughter, or murder. They were not part of what was considered the criminal milieu in a narrow sense. There was also the impression that white-collar crime was victimless and not as damaging to society as offences like robbery. In some countries, white-collar criminals can still expect much lower sentences than other types of criminals.

The assessment of the offences committed in the corporate world began to change in light of the theories of sociologist and criminologist Edwin Hardin Sutherland, who not only established the criminological term 'white-collar crime' in 1939, but also made clear that crimes were not exclusively committed by lower-class offenders.<sup>9</sup> Sutherland, "White-Collar Criminality." The term itself was already used in 1934 by Louis Rothschild, director of the Better Business Bureau in Washington, DC. View all notes Sutherland, who had among other things previously worked on juvenile delinquents in ghettos of recent immigrants, pointed to certain parallels such as the influence of cultural milieus.<sup>10</sup> This concept violated existing prejudices that high-ranking persons would not or only in highly exceptionally circumstances commit crimes and that economic crimes were due to 'merely technical violations', which 'involve no moral culpability'. The privileged position of white-collar criminals is the result of several

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<sup>9</sup>[https://wikivividly.com/wiki/White-collar\\_crime](https://wikivividly.com/wiki/White-collar_crime).

<sup>10</sup><https://www.tandfonline.com>.

factors. Their offences are especially difficult to prosecute because the perpetrators use sophisticated means to conceal them.

- *According to Sutherland's classic*, "White-collar crime is committed by a person of respectability and high social status in the course of his occupation."
- **According to McCarthy and Cohen**, "Economic crimes are illegal acts in which offenders' principal motivation is economic gain. Individuals, groups of people or corporations purposively act in an illegal manner to secure financial returns that cannot be collected by legal means".

While regulations have proliferated globally, in some countries laws are rarely observed and the legislature and the judiciary are deeply corrupt themselves. It is difficult to judge the behaviour of corporations and managers who have to operate within kleptocratic and dictatorial systems. Dictatorships often create perverse incentives and encourage behaviour and rent seeking at the expense of others – or even the majority of citizens. Some of the worst economic crimes have been committed in compliance with the formalities of law such as the Aryanisation of Jewish businesses under the Nazi regime.

Even more complicated than defining white-collar crime and linking it to moral categories is assessing its overall economic impact. Without doubt, it causes enormous damage, mostly at the expense of the weaker members of society. The devastation in the wake of the last financial crisis made this especially visible, as it hurt millions of small and large investors, homeowners, and retirees. On the other hand, economic criminals are sometimes highly ingenious innovators.<sup>11</sup> Enron is a classic example, as the firm reinvented the energy market and overcame its notorious inefficiencies. Salter, Innovation Corrupted. View all notes Many of the most innovative products of the financial industry side-stepped or subverted existing regulations without actually violating them, creating new methods of financing especially for house buyers with little money. In the nineteenth century, the rise of joint-stock companies went hand in hand with widespread security fraud but at the same time became a vital technique for financing industrialisation.

Bernard Mandeville, who had an enormous influence on economic theory in the early eighteenth century and beyond, proposed in his Fable of the Bees of 1714 the paradox that private vices such as greed result in public benefits. He criticised the view that humans had natural feelings of benevolence toward one another, and instead focused attention on self-interested passions. The moral indifference of the egoistic homo economicus became the founding principle of modern economics<sup>12</sup>.

But what prevents rational economic actors from becoming criminals? According to Gary Becker, they act on cost-benefit calculations involving the expected utility, the likelihood of being caught, and

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<sup>11</sup>Report of the Monopolies Inquiry Commission 1965, p. 162

<sup>12</sup>Pharmaceutical Inquiry Committee Report, 1954, p. 146.

punishment costs. Personal traits also come into play. Risk-averse people seldom, if ever, violate criminal laws.<sup>13</sup> On the other hand, those who are risk-tolerant or even risk-seeking, i.e. who display fundamental characteristic of entrepreneurial personalities, are much more likely to become criminals. Becker's study refers to all type of criminals. See Becker, "Crime and Punishment"; Becker, Economic Approach to Human Behavior. View all notes.<sup>14</sup>

William Baumol also stressed the spiritual kinship between entrepreneurship and white-collar criminality. Entrepreneurs can be, according to Baumol, 'persons who are ingenious and creative in finding ways that add to their own wealth, power, and prestige' regardless of legal implications and social consequences. New consumer services like mail-order selling and teleshopping, time-share holiday homes, the usage of credit cards, and internet retailing were in their infancy especially prone to fraudulent behaviour, as many customers did not yet understand the risks involved in these innovative services and countermeasures were not yet in place. View all notes White-collar crime in many cases also requires advanced technical or commercial skills, or sophisticated legal expertise. It takes well-trained accountants, financial experts, lawyers, or computer wizards to develop, discover, and abuse vulnerabilities in cutting-edge products. Although Baumol classifies white-collar criminals as potential innovators, he takes a predominantly negative stance towards them and attributes to them a 'parasitical existence'. View all notes for him economic crimes – just as rent-seeking – are detrimental to the welfare of society and constitute a destructive form of entrepreneurship. They seek 'to redistribute the economic pie rather than to contribute to the growth of the pie'.

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<sup>13</sup>K.D. Gaur (ED.) : Criminal Law and Criminology(2003) p.285.

<sup>14</sup>K.D. Gaur (ED.) : Criminal Law and Criminology(2003) p.285.