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EMERGING TRENDS OF WHITE COLLAR CRIME IN INDIA

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ABSTRACT-

“For a warrior, nothing is higher than a war against evil. The warrior confronted with such a war should be pleased, Arjuna, for it comes as an open gate to heaven. But if you do not participate in this battle against evil, you will incur sin, violating your Dharma and your honour”¹.

- Bhagavad-Gita

The Advance of technological and scientific development is contributing to the emergence of ‘mass society’ with a large rank of file and small controlling elite, encouraging the growth of monopolies, the rise of managerial class and intricate institutional mechanism. Strict adherence to high standard of ethical behavior is necessary for the even and honest functioning of the new social, political and economic processes. The inability of all section of society to appreciate this need in full result in the emergence and growth of white collar crime and economic crime, renders enforcement of the laws, themselves not sufficiently deterrent, more-difficult. Tax evasion and avoidance, share-pushing, malpractices in the share market and administration of companies, monopolistic control, usury, under invoicing or over invoicing, hoarding, profertering, substandard performance of contracts of construction and supply, evasion of economic laws, bribery and corruption, election offences and malpractices are some example of white collar crime²

¹ Bhagavad-Gita 2.31

²Government of India Report of the commission on prevention of Corruption (1964) para2.13, p 11.

RESEARCH METHODOLOGY-

Research Methodology is the science of study of particular subject. Method which research follows in pursuing a research is research methodology. Technique for collecting data referred to as method while logic applying the scientific perspective to study the event is the term methodology. The present research is proposed for its completion through special reference of tax evasion and tax avoidance. The research methodology used for the present research is traditional Doctrinal research method. As most of the information can be sought from the available literature. So the researcher has chosen doctrinal method as method of research for the present research and has used books, journals, research article for preparation of the same. In this study researcher will get the data i.e. information from authoritative judicial and legal sources by simple study, reading, understanding, analyzing and writing down them in to a particular/specified report format. Researcher will try to get required data from social and legal and Article, publication and media also.

Data Collection:-

This research is Traditional doctrinal research so it is largely based upon library. As most of the information can be sought from the available literature. So the researcher has chosen doctrinal method as method of research for the present research and has used books, journals, research article for preparation of the same. And further this data sources are classified under two heads primary and secondary sources of data collection.

Secondary Sources:

Secondary sources of data for doctrinal legal research are material that write or explain or comment on the primary sources. Books Journals, Legal encyclopaedias. Digest of cases. Indexes, official statistics, local or International documents, report, religious books and other library based material etc. are the secondary sources of this study. The studies also depend on secondary data based from references of books, journals, periodicals reports, newspaper and Magazines. The entire above are available in a law library. Researcher will also use internet and websites to get data in a short time, systematic and speedy manner. The above all the Mentioned data sources will form secondary sources of data collection for this research.

Theoretical Framework:-

Variable of the study contain dependent variable. The study used pre-specified method for the data collection. The study used the Books and news paper and research article .

EMERGING TRENDS OF WHITE COLLAR CRIME IN INDIA

INTRODUCTION:

In India White Collar crime means and includes manipulation of funds or in stock exchanges or misrepresentation in advertising or in financial statements of a corporation or violations of labour laws, copyright, patent laws etc. which is mainly 'job oriented' i.e. which occurs during the course of one's occupation but assaulting a personal secretary by his boss will not constitute as White Collar crime.

While resorting to Sutherland it was very much advent that crimes committed by the people of 'High Social Status and respectability in the course of their occupation' will amount to White Collar crime. But in India the situation is totally different. In India mostly White Collar crimes are committed by the people of lower social strata in their occupational capacity. As adulteration of milk by the milk man, selling adulterated food by the shopkeeper, selling expired medicine, taking out few kilos of gas from the cylinder and so on.

White Collar crime in India Businessmen as a part of that unholy trio normally used to engage themselves in Tax Evasion and Tax avoidance or violation of the Foreign Exchange regulations by under invoicing of exports or by over invoicing of imports. To comment specifically on Indian traders for Black Marketing of the essential commodities, profiteering and

Hoarding, Monopolies Inquiry Commission gave a graphic account of that in the following words as³.

"There is hardly anybody in India who has not been a victim of the practice of hoarding, cornering and profiteering. Whenever there is a slight shortage even temporary in any consumer goods for which the demand is urgent and inelastic, almost every trader. It is perhaps unnecessary to use the qualification almost conceals his stock and blindly tells the customers that he has not got the commodity in stock..."

In the course of research of Prof. Hugh Barlow and Sutherland repeatedly pointed out that White Collar crime was more dangerous than any ordinary street crime because the financial loss to the society from White Collar crimes is probably greater than the financial loss from ordinary burglary, theft or robberies. It was very much advent from their opinion that they were more concerned on the economic welfare of a country.

While computing the quantum of loss in India it was estimated that the average loss per theft or burglary is less than Rs. 5000/- or so is rare and the same amounted to lakh is unknown. But on the other hand embezzlement and frauds of lakhs and millions of rupees are very much advent. Indian scholars took the after effect of loss happened from White Collar crimes very seriously as according to them without economic stability a country cannot stand up and for proper functioning of a state economic prosperity is very much necessary.

Edwin Sutherland for first time coined the term "White-Collar crime" in his address to the American Sociological society in 1939⁴. The whole address was aimed to shatter the conventional and stereotyped images

³ Report of the Monopolies Inquiry commission 1965, p.1962

⁴ American Sociological Review Vol.V No.1.

of the criminals as grown and brought up on the dark side of a town, and the belief that the epicenter of the overall Crime problem was that of the lower Strata of the society. He defined white-collar crime as “crimes committed by a person of respectability and high social status into the course of his occupation”. Subsequently he modified his earlier definition of white-collar crime as “crimes committed by a person of the upper socio-economic class who violates the criminal law in the course of his occupational activities and Professional activities”

According to V. R. Krishna Iyer, J. “economic offences often are subtle murders practiced on the community or sabotage of the national economy.” So it may be termed as the

“White Collar Economic Offences”⁵ These economic offences can devastate an entire community rather than robbing a lone victim. Their impact can last for years, stealing crucial services or a lifetime’s savings through crimes invisible to their victims.

Subsequently thereafter Santhanam committee was asked to report on the misdeeds of the elites to that corruption can be traced. Santhanam committee gave a graphic account of the misdeeds of businessmen and industrialists in the following word :—

“Corruption can exist only if there is someone willing to corrupt and capable of corrupting. We regret to say that both these willingness and capacity to corrupt is found in a large measure in the industrial and the commercial classes...”Santhanam committee found that during 1958-1962, licenses valued at millions of rupees were obtained or wrongfully utilized by nearly 700 firms through misrepresentation, forgery or other branches of the Export/Import control regulation. Similarly, illegal accumulation of foreign exchange through just one type of fraud or through under invoicing of exports and over invoicing of imports, — is calculated to be estimated between Rs. 40-50 corers every year.⁶

Two instances of embezzlement and fraud as provided by a report made by Vivian Bose Commission are Notorious Dalmia-Jain and Mundhra case in which loss amounted were estimated at Rs. 3.5 crore.

While dealing with the investigation of Mundhra case, Mr. M. C. Chagla made following observations as“Mundhra is a flamboyant personality and a financial adventurer whose only ambition is to build up an industrial empire by dubious means.”⁷

⁵ Dr.J.N Pandey constitutional Law of India Central Law Publication Allahabad (2003) P.245

⁶Santhanam Committee Report,pp.251-253

⁷ Fourth Annual Report in the working of Indian Companies Act,1956 Government of India (1960)

CONTRIBUTING FACTOR FOR WHITE COLLAR CRIME:

In India scientific and technological advancement has contributed to this new form of criminality commonly known as socio-economic crime or white collar crime. White collar criminality is the product of industrial revolution, although renaissance and reformation also have contributed to the emergence of these crimes in no small measure. Of all the factors, the economic and industrial growth throughout the world has perhaps been the most potential cause on increase in

white collar crimes in recent years. The changing socio- economic scenario of the society coupled with increase in the wealth and prosperity has furnished opportunities of such crimes. Commenting on the growing incidences of white collar crimes in India, the Law Commission in its Twenty -Ninth Report⁸ observed the modern scientific and technological developments and monopolistic trends in business world have led enormous increase in white collar crimes.

The post-independence period in India ushered an era of welfare activities which necessitated regulatory measures on the part of government control means of production and distribution so as to sub serves the common good. The contravention of such regulatory measures generally gives rise to white collar crimes. the problem of white collar criminality has its root in competitive business community which tries to oust their rival competitors in order to earn huge profits. Sometimes such crimes may also be committed merely for the sake of retaining existence in the competitive business. To illustrate, though there is a prescribed code of ethics for practicing lawyers but since the very nature of their profession involves the spirit of combat and competition, they often resort unlawful tactics such as concealment and misrepresentation of facts, which if detected, is punishable under law. To take another example, the private educational institutions in India which receives public- aid or grants furnish false accounts simply for the sake of retaining their existence. Likewise, the members of industrial and business class who enjoys high status in society have a tendency to suppress their real profits by furnishing false and fabricated account of their income and property in order to claim tax-exemptions or avoid payment of heavy taxes.

One more reason for the multiplicity of white collar crime is relatively high socio- economic status of white collar criminals. They belong to an influential group which is powerful enough to handle their occupation tactfully and person affected thereby hardly knows that they are being victimized. Moreover, the public in general is also somewhat apathetic to such crimes this causing obstruction in prosecution and punishment of white collar criminals.

It is often alleged that criminal law administrators and Judges being members of upper strata of the society, are generally sympathetic towards just white collar criminals while dealing with them. But there seems no justification in this assertion. If this allegation is based on the large number of acquittals of white collar

⁸ Law commission of India, 29th Report (1966) p.3

criminals, it may be pointed out that it is not because of the sympathy of Judges for those criminals but because of the thin line of discrimination between criminality and immorality involves in white collar crimes.

The recent developments in information technology, particularly during the closing years of the twentieth century, have added new dimensions to white collar criminality. There has been unprecedented growth of a new variety of computer dominated white collar crimes which are commonly called as cybercrimes. These crimes have become a matter of global concern and challenge for the law enforcement agencies in all new millennium. Because of the specific nature of these crimes, they can be committed anonymously and far away from the victim without physical presence. Further, cyber- criminals have a major advantage: they can use computer technology to inflict damage without risk of being apprehended or caught. It has been predicted that there would be simultaneous increase in cyber- crimes with the increase in new internet web sites. The areas affected by cyber-crimes are banking and financial institutions, energy and telecommunication services, transportation, business, industries, etc.

EFFECT OF WHITE COLLAR CRIME:

This form of criminality has spread all over the world in different degree. The incidence and magnitude of such offence is much greater in developed countries than in developing countries. Even under developed countries are not free from this vice. White collar offence are defined are those crime which either affect the health and material of the community as a whole or the country's economy and by and large are committed not by low class people but invariably the middle class and the elite of the community. These types of offence are consider graver wrong than traditional offences because they affect not only the health and material welfare of the individual but also the economic structure and social fabric of a nation. In the white collar crime motive behind the offence is to greed the money. The financial cost of white collar crimes is probably several times greater than that of all the crimes taken together .In the recent study it has been concluded that the financial loss to society from white collar crime is for greater than the financial loss from the predatory crimes committed by person of lower socio-economic status. White collar criminals violates trust and creates distrust which lower social moral and result into social disorganization to a large while other crimes produce relatively little effect on social institution. In these offences not only the individuals get victimised with pecuniary loss but also such offences often damage the economy and national defence.The offences such as smuggling of narcotic substance, counterfeiting of currency, financial scam, frauds etc. Are some of white collar crimes which evoke serious concern and impact on national security and governance. Finally the effect of white collar crime not only on economical condition of country but also on the development of country like India. Because of number of financial scam happened in India its indirect effect on Indian economy and Indian currency and the financial burden on people who is economically weak. There is a need to creating a public awareness against these crimes through the any communicable media.

WHITE COLLAR CRIMES: - A LITERATURE REVIEW

The concept of White collar crime is Usually Associated with E.H. Sutherland whose penetrating work in this area focused the attention of criminologist on its demoralizing effect on the total crime picture. As it has been mentioned earlier, Sutherland defined white collar crime as “crime committed by a person of respectability and high social status in the course of his occupation.” A white collar criminal therefore is a socially and economically sound person who violates the criminal laws in due course of his performing professional qualities. Misrepresentation through fraudulent advertisements, infringement of trademark, copyrights by the industrialists, hoarding, black-marketing, food adulteration etc. are considered to be some of the instances of white collar crimes. However the definition given by Sutherland is considered to be wide and imprecise and therefore it is subjected to vehement criticisms in all quarters. It is wide in the sense that he did not define since he does not specifically mentions what he means by a person of respectability, nor does he describes the scope and ambit of the term ‘occupation’. Coleman and Moynihan pointed out that the lack of definite criteria for determining who are the ‘persons of respectability and status’ has made Sutherland’s definition of crime the most controversial.⁹ The term ‘high social status’ as used in the definition also leads to discrepancy since the term is a relative one and therefore not specific. As mentioned earlier, the ‘occupation’ term used in his definition, leads to ambiguity as he does not categories what occupation should come within its ambit. Another criticism put up against Sutherland’s definition is that white collar crimes, in the general sense of term, also includes those violations which are not committed in the course of occupation or profession and at the same time, white collar crimes are not strictly committed by the members of the higher socio-economic strata. For e.g. the white collar crime of tax-evasion is not only committed only by persons belonging to the higher strata but also committed by persons belonging to middle or even lower strata of the society.

However, it was not only Sutherland, but many others who preferred to define white collar crimes on the status basis. Hartung defines a white-collar offense as a violation of law regulating business, which is committed for a firm by the firm or its agents in the conduct of its business.” Cressey seems implicitly to be using a wider concept in accordance with Sutherland’s explicit definition-a concept broad enough to include also embezzlement. Moreover there are some who argue that differentials of power and influence are the keys to identify, satisfactorily frame, and unravel fundamental questions about crime and crime control. For example, investigations of sexual harassment have shown there the offender has always been of a superior status than that of the victim. Therefore the principle reason propounded behind the commission of a white collar crime is that of greed and arrogance and not of necessity or any compulsion. White collar crimes throw light on the diverse criminal behavior generally. The status-based definition of white collar crime draws on and reaffirms criminological ties to macro level analyses of social and political processes.

⁹ Coleman & Moynihan : Understanding Criminal Data (1996) pp.8-10

However, there are others who refuse to give much emphasis on offender's social position and repute as the only basis of classifying white collar crimes. They advocate that collaring should be done not of the criminals but of the crimes. The concept of abuse of trust, for example, can be considered to be a white collar crime. Abuse of trust means exploitation of fiduciary position of the agent responsible for the safe custody, discretion, information or for property rights. Here since the trust crime is being committed by citizens wearing both blue collars and white collars. Similar instance can be done as that of adulteration of food, where this type of offence is committed not only by the upper class people but also by middle class businessmen involved in the food business. Therefore we should not always peep into the offender's wardrobe and his official position but consider the modus operandi of his misdeeds and the ways he exploits. Whatever the merits of the position, they hold strong that in white collar crimes the offenders are not always powerful and the victims are ordinary citizens.

LEGAL REGULATION AND COMMISSION REPORT ON WHITE COLLAR CRIME IN INDIA

In spite of the fact that a large number of economic offences have been unearthed in our country in the last five years as Securities Scam, Hawala Scam, Urea Scam, Sugar Scam, Banking Scam, Tele-Communication Scam, Fodder Scam, Stamp scam etc. and an effort from the government of appointing numerous Commissions as Vivian Bose Commission, Bakshi Tek Chand Committee, parliamentary committee on the jeep scandal, Railway corruption Inquiry Commission, Sadasivam committee of enquiry, S. R. Ray Commission of Inquiry, S. R. Das Commission, M.C. Chagla Committee and many more in which thousands of crores of rupees were involved, surprisingly no offenders have been convicted so far.

Are there really any remedies to curb these malpractices at the advent of our Welfare state? Why those obligations imposed on the state to achieve the status of welfare state are not implemented properly? Restrictions imposed on the ownership and the distribution of the national wealth run from the following provisions of our Indian Constitution:

“The state shall in particular direct its policy towards securing that the ownership and control of the material resources of the community are so distributed as best to sub serve the common goods; that the operation of the economic system does not result in the concentration of wealth and means of production to the common detriment”.

Subsequently on the report submitted by Santhanam committee certain legislations earlier enacted were amended as Anti-Corruption Laws (Amendment) Act, 1964; Foreign Exchange (Amendment) Act, 1964; Prevention of Food Adulteration Act, 1954, Wealth Tax (Amendment) Act, 1964, Income Tax act, Customs Act 1962, COFEPOSA 1974, Foreign Exchange Regulation Act 1973, Narcotic Drugs and psychotropic substance Act 1985, Banking regulation Act 1949, Prevention of corruption Act 1988, Indian penal Code (Frauds and Financial Frauds) Information Technology Act 2000, Companies Act 2013, These Economic offences may either be cognizable or Non-cognizable in nature and more powers have been conferred on the investigating

officers and on the Magistrates for conducting the proceedings of the summary trials. A number of special laws regulating customs, excise, taxes, foreign exchange, narcotic drugs, banking, insurance, trade and commerce relating to export and import have been enacted in the country. Despite special laws and independent enforcement agencies for handling these crimes there is no decline in the crime rate, on the contrary it is constantly rising, which is a serious cause of concern for all those who are associated with the administration of criminal justice.

After Santhanam committee report was published it was very much advent that for the first time Anti White Collar legislations include Prevention of Food Adulteration Act because it is an act of mischief done by a person out of his occupational capacity and therefore it will also be termed as a White Collar crime. The main object of Prevention of Food Adulteration Act is to eliminate the danger to the 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 defense.¹⁰ The report of the Monopolies Inquiry commission expressed great concern about the chronic problem of hoarding, profiteering and black marketing of essential commodities by trader in India. In times of shortage and scarcity of consumer commodities, the traders withdraw the stock and subsequently dispose it if at exorbitant prices.¹¹

If we have specific legislations to trace out White Collar Criminality then why these offenders go unpunished? Main reasons for which these white Collar criminals or occupational criminals go unpunished are : i) legislators and the law implementers belong to the same group or class to which these occupational criminals belong; ii) less police effort; iii) favorable laws; iv) less impact on individuals.

At this present juncture what we need is the strengthening of our enforcement agencies such as Central Bureau of Investigation, the Enforcement Directorate, The Directorate of Revenue Intelligence, The Income-tax Department and the Customs Department. Concentration and distribution of national wealth must be done in a proper manner. Speedy trial should be arranged by appointing more Judges. Central Vigilance Commission must keep a constant vigil on the workings of the top ranking officers. General public must not avoid being engaged themselves in the prosecution of the White-collar criminals as the offence in general is directed towards them. Lastly if they are traced and proved guilty then Deterrent Theory of punishment is an apt one.

SUM-UP:

These economic offences may either be cognizable or non-cognizable in nature. Local police deals with a considerable number of economic offences falling under the board category of 'Cheating', 'Counterfeiting' and 'Criminal Branch of Trust'. A number of special laws regulating customers, excise, taxes, foreign exchange, narcotic drugs, banking, insurance, trade and commerce relating to export and import have been enacted in the country. These laws are enforced by the respective departmental enforcement agencies created

¹⁰Santhanam Committee Report, p.253

¹¹Id at. 1

under the statutory provisions. Legal powers for investigation, adjudication, imposing of fines, penalties and under special circumstances arrest and detention of persons are derived from the same legislation. The officers of the enforcement agencies are also vested with powers to summon witness, search and seize goods, documents and confiscate the proceeds. Despite special laws and independent enforcement agencies for handling these crimes there is no decline in the crime rate, on the country it is constantly raising, which is a serious cause of concern for all those who are associated with the administration of criminal justice.

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