SENTENCING POLICY IN WHITE COLLAR CRIME IN INDIA

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ABSTRACT

The complexity of the white-collar crimes is very much implicit from the standpoint of its definition dilemma, involvement of multi-investigative agencies, multi-prosecuting units, various associated legislations, and at times, supplement or concurrent jurisdictions of courts under special or general statutes. However, the lookout of the present paper starts once a competent court held an accused convicted or in other words, it is the stage of pronouncing “sentence” for commission of “white collar crime” or “economic crime”, “finance crime”, “occupational crime” or “corporate crime”, or other alike terminology fits within the ambit of “white-collar crime.” India does not have any sentencing policies or guidelines on date, particularly in relation to white-collar crimes and there is rarity in judicial precedents concerning sentencing framework in white-collar crimes. Then, how a judge goes to decide an appropriate punishment or penalty for a particular crime to bring equal and impartial justice or in other words, can we say that the criminal judicial system meets up the “equal and impartial justice” in sentencing, particularly in white-collar crime cases in India? This paper explores the factors that are consider as deciding factors while passing order on sentence by the courts and further the difficulties or dilemma that restrained the legislature from making a policy, statute or guidelines on sentencing framework. The analysis is based on the doctrinal study due to certain limitation at this point of time however, it is emphasised here that the extensive empirical studies in this regard is highly recommended in India to understand the fundamental problems in relation to sentencing in criminal justice system in India from the standpoint of its practicality, particularly in cases of white-collar crime.

KEY-WORDS
White-collar crime, economic crimes, corporate crimes, sentencing policy in India, white-collar offenders

INTRODUCTION

Recently, a Manager of FCI (“Food Corporation of India”) was arrested in a bribery case of Rs. Two Lakh by the CBI (“Central Bureau of Investigation”) in relation to manipulation in procurement process and food-grains’ e-auction as per press release on 19th August, 2021.1 In another press release on 17th August, 2021, the CBI reported to have arrested a CMD (“Chief Managing Director”) of Maharashtra based private company in relation to cases registered in the year 2017 on the direction of the Apex Court that concerns “Chit-fund Scam” of about Thirty-Eight Crore Rupees.2 On 12.08.2021, MD of a public limited company was arrested by the ED (“Enforcement Directorate”) under PMLA, 2002 (“Prevention of Money Laundering

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1Central Bureau of Investigation, 2021. CBI ARRESTS MANAGER, FOOD CORPORATION OF INDIA AND PRIVATE PERSON IN A BRIBERY CASE OF Rs. TWO LAKH, Delhi, India: Central Bureau of Investigation.

2Central Bureau of Investigation, 2021. CBI ARRESTS CMD OF A PRIVATE COMPANY IN AN ON-GOING INVESTIGATION OF A CASE RELATED TO CHIT FUND SCAM, Delhi: Central Bureau of Investigation.
Act, 2002”) for money laundering offence and for causing a “loss of around Rs. 3316 Crore to a public sector banks’ consortium” on the basis of a FIR registered by CBI. In another case, the ED attached the properties of an Ex-Chairman of a Sahakari Bank and four times MLA of worth Rs. 234 Crore in a “bank fraud” case on the basis of FIR registered by EOW, Mumbai (“Economic Offence Wing, Mumbai”) wherein, money laundering of Rs. 560 Crore approx. in 67 fictitious accounts was revealed whereas in another case, confiscation of assets order has been passed by special (PMLA) Court in the Bhola Drug case, where various FIRs were lodged under NDPS, IPC and Arms Act in “multi-crore synthetic drug racket” operated by “wrestler turned cop turned drug Mafia”. “Fake Covid-19 test scam” during the Kumbh Mela, 2021, “siphoning off of the earnest money to the tune of Rs. 11.55 Crore of the bidders deposit” through hacking from the bank account of E-procurement cell, govt. of Karnataka registered by Cybercrime Police Station, CID, Bengaluru, money laundering investigation against Madhav Das & others in relations to 24 FIRs lodged against the crimes related to “robbery, dacoity, attempt to murder, criminal conspiracy, use of Arms and Ammunitions” under various Statute such as under IPC, Arms Act, Unlawful Activities (Prevention) Act, and Explosive Substance Act, criminal case of “tainted funds to the tune of Rs. 325 Crore” lodged against Utech Group before Delhi Police, and Navneet Kalra’s oxygen concentrator case are few more recent examples of crimes.


9The New Indian Express, n.d. Black marketing case: 'Navneet Kalra has committed white-collar crime',
committed by persons of high society or repute. The gravity or severity of the crimes cited above are in no ways lesser then the ill-famous cases in India namely, “Harshad Mehta Securities Fraud”, “Satyam Scandal-corporate accounting fraud”, “Ketan Parekh Security Fraud”, “Abdul Karim Telgi Stamp Fraud”, “Sardha Chit Fund fraud”, “Punjab National Bank Fraud”, “Coal Scam”, “Urea Scam”, and “2G Scam”. What is common in these multifaceted crimes? All these crimes are covered under the sociologically based concepts of crime given by Sutherland who coined such crimes as the “white-collar crime”.

The complexity of the crimes is very much implicit from the aforesaid examples and it can also be understandable from the standpoint of involvement of multi-investigative agencies, multi-prosecuting units, various associated legislations, and at times, supplement or concurrent jurisdictions of courts under special or general statutes. However, the relevant stage for the present paper is the post judgment passed by a competent court(s) against the accused person(s) in such crime(s) or in other words, it is the stage of pronouncing “sentence” after the Court held an accused guilty or convicted him or her for committing “white collar crime” or “economic crime”, “finance crime”, “occupational crime” or “corporate crime”, or other alike terminology fits within the ambit of “white-collar crime.” The provisions for range of quantum of sentencing is provided in various Statues including special as well as general statues, however, the fundamental issue is the wider amplitude of sentencing types and ranges and the discretionary powers to exercise the same with the concerned jurisdictional courts that leads to ambiguous orders, inadequacy in sentencing, lack of uniformity within cases of analogous nature, and neglected victims.

India does not have any sentencing policies or guidelines on date, particularly in relation to white-collar crimes, indeed, India’s criminal justice system has no sentencing legislative framework available at all. Nevertheless, crimes on streets (blue-collar crimes as they are distinguished from white-collar crimes) do have some directional uniformity because of the plethora of judicial precedents, if consistent views in this regard. However, there is rarity in judicial precedents concerning sentencing framework in white-collar crimes. Therefore, it is clear and need no citation to assert that “India does not have any sentencing policy in white-collar crimes”, then, how a judge goes to decide an appropriate punishment or penalty for a particular crime to bring equal and impartial justice or in other words, can we say that the criminal judicial system meets up the “equal and impartial justice” in sentencing, particularly in white-collar crime cases in general and specifically in India? Thus, this paper starts its exploration with analysing the factors that are consider as deciding factors while passing order on sentence by the courts and further the difficulties or dilemma that restrained the legislature from making a policy, statute or guidelines on sentencing framework. The analysis is based on the doctrinal study due to certain limitation at this point of time however, it is emphasised here that the extensive empirical studies in this regard is highly recommended in India to

understand the fundamental problems in relation to sentencing in criminal justice system in India from the standpoint of its practicality, particularly in cases of white-collar crime.

**JUDICIAL REVIEW**

One significant aspect that most of the literatures in the subject field expressed or agreed upon is that the judges while deciding on sentencing, although they consider the gravity of white-collar crime committed by offenders, however, get influenced by several factors for favouring non-incarcerate type of sentencing or punishment. For instance, in a study based on empirical research, the scholars of or in association with Yale Law School concluded that the judges take “non-incarcerative” approach while deciding the sentence in white-collar crime.\(^{11}\) In another research, it has been argued that there could be no authoritative statistical indices of “white-collar crime” primarily for the reason of it being a “non-scientific term” and that it covers diverse range of activities of offenders leading to varied nature of offence ranging from “deception, embezzlement, fraud, forgery and the like to offenses under corporation and securities law, taxation, security fraud, customs fraud, and money laundering”\(^{12}\). According to an empirical research in Australia, creating a generality in sentencing the white-collar offenders is a difficult task due to conflating tendency of offender’s social status and offence’s nature, for instance, to classified as “white-collar crime” a minor fraud against bank by a person of lower societal strata would depends upon the language of the legislature to the effect whether the focus if on the offence or on the offender.\(^{13}\) The scholars highlighted the paradoxes usually faced by the judges in cases of white-collar crime, the examples cited by them includes crimes committed versus the offender who committed that crime; property crimes vs. crimes of violence; profits vs. losses; disparity in number of offences committed vs. crimes actually charged; plea bargaining’s practical aspects; balancing the formal and informal system of punishment; differenting real and symbolic aspects of sentences; and competing purposes of sentencing.\(^{14}\) It is further argued in the context of Australian criminal legal system that issues of “leniency” or “severity” cannot be determined in the abstract for instance, in case of fraud, what should be an appropriate sentence would depends upon the circumstances of the offence and the offender. In other words, first and the foremost difficulty is in identifying the cases as “white-collar crime” because of their heterogeneity.\(^{15}\)

It is well founded in literatures that the “deterrence” maintains primary importance while making order on sentence in any criminal case in general, however, according to various studies it holds good in case of white-collar crime cases also\(^ {16}\). Nevertheless, it is also the quite unanimous view that most of the times the different crimes within the same umbrella may not be reconcilable. In this regard excerpt from the judgment of


\(^{13}\)Ibid.

\(^{14}\)Ibid. Note. 12 pg. 2-3

\(^{15}\)Supra. Note. 12. pg. 4

\(^{16}\)Ibid. pg. 5
Queensland Court of Appeal is noteworthy, the judges concluded that-

“An analysis of the two categories of cases shows [that it is difficult to reconcile them, whereas offenders convicted of social security frauds have generally been required to serve terms of imprisonment, even where the amounts involved have been small, the same cannot be said generally of those convicted of tax frauds, even where the amounts involved have been relatively large.”

Many scholars are of the view that there are three significant categories of information relevant while sentencing an offender, firstly, the aim of punishment in general, that means imposing “just” punishment that matches with a form of “retribution”, “deterrence”, “rehabilitation” or other alike; secondly, information about offence for example, how grievous is the crime in terms of statutorily provided maximum penalty or punishment, danger to the society, harm inflicted, offence’s pervasiveness, offender’s participative rate, or other similar factors; thirdly, information about the offender such as age, sex, health, family, employment and income, character, and societal background. Various literature also acknowledged that a judge while sentencing also take into consideration the factors concerning to the criminal justice delivery system for example, delay, cost, or offender’s become state witness. It is true and thus needs no further citation to understand that such factors are always complex and inconsistent in nature and carry dissimilar weights.

Another aspect which is well-founded in the literature is related to the “white-collar crime” is related to its jurisdiction. For prevention and controlling of such crimes, the jurisdiction has been vested upon almost all the three major organs of the judicial system, that is, criminal, civil, and administrative law worldwide. More widely accepted factor in the context of sentencing white-collars criminals is acceptability of “correlative principle” that is proportionality in relation between the severity of the punishment and the gravity of offence. The emphasis on the ideology that equality in the criminal sentencing is depends upon the culpability principle and that constrains the scope of justifiable punishment because treating “like cases alike” is what the justice entails. The major issues faced in sentencing white-collar offenders includes moral dilemmas concerning balancing of social interest in punishing the offence and the concerns that flows from the particular offender. Various studies have revealed that a uniform or central policy in the context of white-collar crimes is difficult to form primarily for the reasons that the general factors count for sentencing concerns “general deterrence”, “incapacitation”, “rehabilitation”, and “specific deterrence” do not justify incarceration in white-collar crimes. However, it is also observed that mostly the white-collar offences that are committed on calculative planning, in

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17 Ibid. pg. 7
18 Ibid.
21 Ibid. pg. 1430
22 Ibid pg. 1431
23 Ibid. pg. 1436
addition to the degree of social harm such crimes inflict is suggestive of their comparative exposure to general deterrence but the issue raised is whether such deterrence requires incarceration for achieving maximum success in fulfilling the purpose of sentencing principles. The scholars argued that “neither moral nor pragmatic elements of criminal sentencing offers clear implication for sentencing white-collar criminals.”

The conclusions reached on the basis of empirical study highlights three major issues of conflict in making uniform sentencing policy concerning white-collar crimes, firstly, competing nature of the principle of equality and the principle of individualized sentencing, secondly, the justification dilemma for harsh sentences versus similar harsh sentences in non-white-collar crimes; and thirdly, the consideration dilemma that concerns whether to consider the gravity of offences keeping in mind the general deterrence principle or to consider the status of offender. There bound to have inconsistency, rather there are some inherent ambiguities such as issues related to wider or broad non-scientific definition, methodological issues such as collecting data from various authorities; technical issues such as varied manner of prosecutions by different authorities; and the political issues such as preferential treatment or influential treatment in sentencing decisions. The trend of alternative sentencing is also prevalent particularly in USA however, the non-incarcerated form has also been criticized. The other examples of alternative punishments include “bumper stickers or electronic sensor on the ankle, or community service” however, they have their own pros and cons for instance, sentencing community service to a corporation committed food adulterated crime. Another issue is related to whom to punish particularly where corporation or non-natural legal entities are involved.

An empirical study based upon interviews of judges of federal courts in USA revealed that many judges are of the views that “prisons” would not rehabilitate white-collar offenders, rather they may have adverse effect; another judge was of the view that punishing one would definitely affect the decision of others tempting to commit the similar crime while on sitting on similar position, for example, crime of embezzlement, in brief it supports deterrence principle. The studies further revealed that mitigating effects are also being considered by the judges while deciding the sentencing in white-collar crimes, for examples, loss of position financially, economically, occupationally, and socially on the premise that due to such losses, the offender would not be able to cover up such loss for instance, a bank manager after pleaded guilty or convicted would leave with very little options like job of bookkeeper or maintenance man. Issuance of indictment or framing of charges are also considered to have a strong impact upon the offenders and thus indirectly a factor while deciding on sentence. Another set of divergent views is about awarding fines in such cases. It is argued that there are primarily two reasons for believing “fines” as an ineffectiveness sanction, firstly, judges believe that most of

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24 Ibid.
25 Ibid. pg. 1437
28 Ibid. pg. 484
29 Ibid.
the white-collar offenders are bankrupt or facing financial constraints by the time they get sentenced, and secondly, these white-collar offenders are believed to be very affluent that even the maximum monetary sanctions provided in the Statue have hardly any impact upon them.\(^\text{30}\)

To sum, the literature reviews have highlighted various facets or dimensions concerning constraint in forming universal guidelines or policy in sentencing white-collar offenders. It also discloses the parameters or factors generally taken into consideration by the judges while taking decision on sentence in such crimes. Nevertheless, it is clear that although, there are few nations such as USA and UK having some sort of guidelines or policy commissions however, none of them are without debate, indeed there is no ideal sentencing policy in relation to the white-collar crimes worldwide. India is no different.

FACTORS INFLUENCING SENTENCING THE “WHITE-COLLAR OFFENDERS”

To start with, the question of “equal justice” in sentencing is a very subjective issue and always open for discussion and is debatable. For instance, one should not expect comparison for equality of sentencing in case of “street-crimes” and “white-collar crimes” because there would be diversity in habituality, criminal behaviour, and socio-economic status such as, street-crime offending may be due to unemployment whereas, commission of white-collar offending is due to being in employment or occupation. Similarly, a businessman who commits stock fraud cannot be compared with the habitual steals or forging checks.\(^\text{31}\)

From the analysis of scholarly writings based on conceptual and empirical studies, it is observed that similar set of factors or conflicts have been influencing the judges worldwide while making order on sentence in white-collar crimes. The consideration factors as well as the conflicts arises are both based on the theories of deterrence, retribution, reformation, rehabilitation, incapacitation, or alike as established theories in case of non-white-collar crimes. The other factor is related to the quantum of punishment. There are arguments both in favour of as well as against the punishment in the form of incarceration. The debate is also on the factor of leniency or inadequate fines as maximum sanction limit. Another point of argument is the limitation of judges’ jurisdiction in imposing punishment such as, in India, where the sentencing powers of trial judge is at times lesser that what is prescribed for a particular crime and thus, in such cases either the judges chose to sentence lesser punishment to bring it within the ambit of its jurisdiction on sentence or refer it to the superior jurisdictional holding judge for sentencing. Multi-faceted jurisdictions in case of white-collar crimes is also one of the reasons behind ambiguities and non-uniformity. The ambiguities are myriad in nature; however, it is also observed that such ambiguities resulting into the apparent disparity in orders on sentencing, in other words, it showing an “unjust” face of the criminal justice system having aim and purpose to deliver justice that can be said to be “just” in nature. To sum, the major deciding factors are not new however, their implications have multi-dimensional impact.

\(^\text{30}\) Supra. Note. 27, pg. 496

\(^\text{31}\) Supra. Note. 30
and effect on the decisions of judges on sentencing white-collar criminals.

WHITE-COLLAR CRIME: INDIAN VERSION

Indian criminal statues do not refer the term “white-collar crime” on date however, it does not mean that the term is new in criminal jurisprudence of India, it has been in use in its popular sense for myriad crimes such as corporate crimes, economic crimes, financial fraud, environment crimes by corporates, occupational or profession related crimes, tax-evasion crimes, and IPR crimes since its inception.

However, the significance of the term “white-collar crimes” may be better understood in language of the Santhanam Committee’s report. Wherein it is stated as follows:

“2.13. The advancement of technological and scientific development is 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 a managerial class and intricate institutional mechanisms. Strict adherence to a high standard of ethical behaviour is necessary for the even and honest functioning of the new social, political and economies processes. The inability of all sections of society to appreciate in full this need results in the emergence and growth of white-collar and economic crimes, renders enforcement of th laws, themselves not sufficiently deterrent, more difficult. This type of crime is more dangerous, not only because the financial stakes are higher but also because they cause irreparable damage to public morals. Tax-
evasion and avoidance, share-pushing, mal-practices in the share market and administration of companies, monopolistic control, usury, under-invoicing or over-invoicing, hoarding, profiteering, sub-standard performance of contracts of construction and supply, evasion of economic laws, bribery and corruption election offences and mal-practices are some examples of white-collar crimes.”

The aforesaid views of the committee found place in the 29th law commission report of India on “proposal to include certain social and economic offences in the Indian Penal Code”. The law commission’s report revealed that the Santhanam Committee had given great emphasis upon the emerging trend of the white-collar crime.

It is relevant to note that the Santhanam Committee had not used the term “white-collar crime” as a replacement or substitution of “economic crimes”. However, the Law Commission opted for “economic crimes” over “white-collar crimes” for inclusion in criminal statues in India. The law commission discussed about issues related to “white-collar crime” in its report. The report emphasised upon the Sutherland’s definition of white-collar crime, it is stated as a crime committed by a person of repute and high social status in the course of his occupation. It considered commission of a crime facilitated by office, calling, profession or vocation of the accused within the ambit of “white-collar crime”, it further emphasised that white-collar crimes exclude crimes such as murder, adultery and intoxication even if committed by person of repute and high

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32 Law commission of India, 1966. 29th Report on Proposal to Include Certain Social and Economic Offences in the Indian Penal Code, Delhi: Law Commission of India. pg. 3

33 Ibid. pg. 3

34 Supra. Note. 32
social status as they are nothing to do with their occupation.\textsuperscript{35}

In the report, it is also highlighted that attention of the public at large need to be drawn upon the harm caused by such crimes to the society and how such crimes also have to bear same moral stigma as in case of non-white-collar crimes. It further pointed out that the “relatively unorganized resentment of the public towards such crime” is also one of the significant reasons for differential implementation of the law in cases of white-collar criminality.\textsuperscript{36} Three major reasons of such resentment has been discussed in the report, namely, \textit{first}, violations of law in white-collar crime cases are complex in nature that needs appreciation of experts; \textit{second}, the public agencies such as press do not express the organised moral sentiments of the community, primarily for the reasons that they are themselves controlled by businessmen involved in violations of many laws; and \textit{third}, the laws related to regularization of business is a relatively new and specialized part of the statutes.\textsuperscript{37} The law commission did the comparative studies of USA, UK, commonwealth countries, and Russia and find it apt to choose “economic offence” somewhat similar to the Russian concept over others to be followed in India’s criminal statute namely, IPC and to leave most of the offences not included in the IPC or under “economic offence” with special and self-contained enactments that supplement the “basic criminal law” to dealt with.\textsuperscript{38} India on date following the same concept.

Therefore, it is apparently clear that why forming a sentencing policy related to white collar crime in India would be a difficult task. However, one has to consider that the law commission report was on the basis of comparative and contemporary studies of the 60s whereas, it is 2021, thus, the complete dependency upon such report can be and must be debatable in the light of technological, economic, political, and societal developments in the field of white-collar crimes and needs updating.

In the context of the economic and corporate crimes in India, the quantum of punishment or penalties are not uniformly applied. The observation expressed here is on the basis of professional experience of this field however, it is not feasible to cite specific numbers or cases for want of authoritative empirical studies. The types of punishments provided in IPC is not necessary to reproduce here however, it is enough to understand that the range of punishments and the discretion of judges to choose and further to quantify is on the higher side that leads to “unjust” or “disparity” in sentencing same or similar crimes. Also, most of the offences are provided with monetary penalties only, in fact, the recent de-criminalization of corporate crimes under the Companies Act, 2013 is one such examples, tax laws, and consumer cases can be good examples to further examine the aforesaid point.

Although there are provisions for imprisonment under various special statues including those stated above however, most of them are bailable, and compoundable in nature. The fundamental reasons for such lenient approach can be understand from the aim and objectives of such special Statues, for instance, Information Technology Act, was enacted for advancing e-commerce and to reduce paper-documentations; similarly,

\textsuperscript{35} Ibid. pg. 5  
\textsuperscript{36} Ibid.  
\textsuperscript{37} Ibid. pg. 7  
\textsuperscript{38} Supra. Note. 32. pg. 17-18
the Income Tax act is to collect revenues, and the companies Act is to facilitate business in an organized and structured manner, similarly, the consumer protection act is primarily for providing the reliefs to consumers more than punishing the offenders however, recent amendment in the Consumer Act has included imprisonment for offenders, which is a positive step as it may have a deterrence effect upon similar situated persons tempted for committing such crimes.

At this juncture, judicial approach in India towards sentencing in general and white-collar crime in particular is relevant to mention. In this regard the case of State of Punjab vs. Prem Sagar is noteworthy. In this case the Apex Court of India held as follows:

"6. Whether the court while awarding a sentence would take recourse to the principle of deterrence or reform or invoke the doctrine of proportionality, would no doubt depend upon the facts and circumstances of each case. While doing so, however, the nature of the offence said to have been committed by the accused plays an important role. The offences which affect public health must be dealt with severely. For the said purpose, the courts must notice the object for enacting Article 47 of the Constitution of India.

7. There are certain offences which touch our social fabric. We must remind ourselves that even while introducing the doctrine of plea bargaining in the Code of Criminal Procedure, certain types of offences had been kept out of the purview thereof. While imposing sentences, the said principles should be borne in mind."

In another case, the Apex Court held that-

"15...Imposition of appropriate punishment is the manner in which the courts respond to the society's cry for justice against the criminals. Justice demands that courts should impose punishment befitting the crime so that the courts reflect public abhorrence of the crime..."

In Subramanian Swami vs. Dr. Manmohan Singh, the Apex court observed that-

"The magnitude of corruption in our public life is incompatible with the concept of socialist, secular, democratic republic. It cannot be disputed that where corruption begins, all rights end. Corruption devalues human rights, checks development and undermine justice, liberty, equality, fraternity which are the core values of our Preamble. Therefore, the duty of the court is that any anti-corruption law has to be interpreted and worked out in such fashion as to strengthen the fight against corruption."

Similar, views were taken in J. Jayalalitha v. Union of India case also. In this regard A Watiao case is noteworthy, wherein, one senior IAS officer serving under Government of Manipur was party to a conspiracy in giving contract to the firm at an extremely exorbitant rate. The Special Judge, Manipur sentenced him to pay a fine of Rs. 10,000/- and to imprisonment till the rising of the court. The Guwahati High Court did not interfere with the order of the Special Judge.

40 Ibid.
on appeal. On further appeal, the Apex Court maintained the conviction of fine, but enhanced the sentence of imprisonment to six months. However, it was held that the awarding sentence of imprisonment till the rising of court is mockery of justice and that the lower court should have taken a serious view of the matter instead of soft dealing when corruption of a responsible Government Officer is involved.

In another case, filed by Common Cause, the Apex court of India emphasized that the change in socio economic outlook where, the public servants are entrusted with broader discretionary powers should be held personally responsible for their mala fide acts. Similar views taken in Shailesh Jasvantbhai case. In this case the Apex court held as follows:

“7. The law regulates social interests, arbitrates conflicting claims and demands. Security of persons and property of the people is an essential function of the State. It could be achieved through instrumentality of criminal law. Undoubtedly, there is a cross-cultural conflict where living law must find answer to the new challenges and the courts are required to mould the sentencing system to meet the challenges. The contagion of lawlessness would undermine social order and lay it in ruins. Protection of society and stamping out criminal proclivity must be the object of law which must be achieved by imposing appropriate sentence. Therefore, law as a cornerstone of the edifice of "order" should meet the challenges confronting the society. .... Therefore, in operating the sentencing system, law should adopt the corrective machinery or deterrence based on factual matrix. By deft modulation, sentencing process be stern where it should be, and tempered with mercy where it warrants to be. The facts and given circumstances in each case, the nature of the crime, the manner in which it was planned and committed, the motive for commission of the crime, the conduct of the accused, the nature of weapons used and all other attending circumstances are relevant facts which would enter into the area of consideration.”

The judicial approach in India is no different from the judicial approaches outside India concerning sentencing guidelines and policies. For instance, Indian judiciary also give weightage to aggravating and mitigating factors. In a case, the Bombay High Court held in Negotiation Instrument Act case, that punishment of five days is like a flee bite sentence where the consideration amount of cheque that was bounced is more than Four lakh Rupees.

In Alister Anthony Pareira case, the Apex Court of India held that-

“Sentencing policy is an important task in the matters of crime. one of the prime objectives of the criminal law is imposition of appropriate, adequate, just, and proportionate sentence commensurate with the nature and gravity of crime and the manner in which the crime is done. There is no straitjacket formula for sentencing and accused on proof

45 State of Madhya pradesh vs Mehtab (2015) [2015 (5) SCC 197].
46 Ibid.
of crime. The courts have evolved certain principles: twin objectives of the sentencing policy is deterrence and correction. What sentence would meet the ends of justice depends on the facts and circumstances of each case and the court must keep in mind the gravity of the crime, motive for the crime, nature of the offence and all other attendant circumstances. The principle of proportionality in sentencing a crime doer is well entrenched in criminal jurisprudence. As a matter of law, proportion between crime and punishment bears most relevant influence in determination of sentence. The court has to take into consideration all aspects including social interest and consciousness of the society for award of appropriate sentence.”

In Prem Raj case, wherein the accused was convicted under Prevention of Corruption Act and was sentenced to undergo rigorous imprisonment for two years and fine of Rs. 500/- along with additional sentence of imprisonment for three and half years and a fine of Rs. 1000/- under Section 13(2) of the Act. However, the High Court enhanced the fine amount of Rs. 15,000/- in lieu of imprisonment and directed the State government to formalize the matter under Section 433 (c) of the Code of Criminal Procedure. The Apex Court on appeal of the State held that the question of remission is within the domain of the appropriate government and it is not open to the High Court.

This shows the travesty concerning sentencing white-collar criminals and the jurisdictional approach towards it. Similarly, in Pyarali K. Tejani case, the five judges’ bench of Apex Court observed with disagreement that “A successful prosecution for a food offence ended in a conviction of the accused, followed by a flea-bite fine of Rs. 100/-.”

Last but not the least, the Apex Court in Rajendra Pralhadrao Wasnik, held that “… it is always preferred not to fetter the judicial discretion by attempting to make the excessive enumeration, in one way or another. … Every case has to be decided on its own merits. The judicial pronouncement, can only state the precepts that may govern the exercise of judicial to a limited extent. Justice may be done on the facts of each case. These are the factors which the Court may consider in its endeavour to do complete justice between the parties.”

In brief, the discretionary powers to the judges for order on sentence is determined either by special statues or the Criminal Code in general. The provisions in Criminal Code that deals with sentencing are Section(s) 235, 248, 325, 360 and 361. However, the factors that required to be consider before exercising the judicial discretion are not provided in law and thus, it has been academically and judicially evolved factors that have been infused in the criminal justice system and taken into consideration while passing an order on sentence by a judge. The same methodology has been applied in cases of sentencing white-collar offenders.

CONCLUSION

This paper starts with the statement that there is apparently no sentencing policy or guidelines available in India. However, the scholarly writings and the analysis of judicial approach shows that there exist some factors that are consistently consider by the judges while passing an order on sentence be it a white-collar crime or non-white-collar crime such as the effect of theory of deterrence. However, the issue is more towards the exercise of discretionary powers that are being exercised without applying the judicial mind or consider mercy on arbitrary grounds. The other factors for consideration are the gravity of crime, mode and planning of crime, impact on victims, compulsions of accused for committing such crimes, delays, sufferings of accused, sole bread-earner of the family, health issues, financial status, or alike situations. The definition inadequacy, the methodological inefficiency, political influence, and technical impediments are broadly accepted issues in non-formation of sentencing policy or guidelines in cases of white-collar crimes.

The law is dynamic in nature and thus the changing in laws over time is its obvious destiny therefore, the need is to keep checking and updating the system time to time. The legislature has to initiate and work on the legal framework of sentencing policy. For instance, there could be a separate chapter on sentencing in the criminal code or comprehensive guidelines may be issued by the legislature. However, the possibility of the same can be made visible and feasible only after extensive multi-disciplinary empirical studies on the conceptual, definitional, and sentencing approaches concerning “white-collar crimes” with whatever terminology in law. The ray of hope is also there from the judicial approach that has been evolving in a manner suitable with the changing societal, economical, and political changes however, the judiciary has to be impartial, avoid unwarranted influences, be competent in applying the discretionary powers, and be transparent in proceedings. And, finally the public at large need to be aware of the harms caused by the white-collar criminals to understand the adverse impact and intensity of such crimes on the growth and development of socio-economic culture and structure of the nation.

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Indian Penal Code. Delhi: Law Commission of India.


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