MENS REA IN STATUTORY OFFENCES WITH SPECIAL REFERENCE TO WHITE COLLAR OFFENCES

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ABSTRACT
Since time immemorial, the law did not always require mens rea for liability. Early Germanic tribe archives and texts, it was suggested that, for imposing liability, causing of an injury is essential, without regard to culpability. But over the time this paved the way for tort law and criminal laws. It seems likely that as the distinction between tort and crime appeared—that is, as the function of compensating victims became distinguished from the function of imposing punishment—the requirement of mens rea took on increasing importance due to the rationalistic and growing pragmatic approach of the jurists.

White collar offences on the other hand were recognised and took to a boom in the period of the great depression from 1929-1933 and the years after it. It flourished due to the higher rate of unemployment which was predominant in those 10 years and the people resorted to corporate frauds and street crimes to keep themselves afloat. Then after the situation subsided after the WW II, the unemployment index declined due to surplus need. But till then perpetrators had already discovered the ins and outs of the white collar crimes. And after this dynamic change, new statues and laws were introduced in order to ensure that such crimes are regulated and the society is safeguarded against them, since they have a very long lasting detrimental effect on the company involved, employees and the economic sector in general. The courts hence had to construct and redefine the involvement of the elements of the crimes in order to ascertain that justice is served.

The objective of this research paper is to understand the embryonic development of the white collar crimes in India and how it created a nexus with redefining the clause of mens rea.

KEY WORDS: Offences, Crime, Statute, Statutory Offences, mens rea, white collar crime

SCOPE OF STUDY
The following research paper has been formulated with analysing and understanding the concepts of mens rea in statutory offences and White collar crimes. They have be further correlated while understanding the dynamics of criminality and culpability. This theory discusses the presumptions made in the statutes and under which conditions such presumptions were discovered and what are the essentials for their involvement in a case.

These common factors of relevance were then further backed by observations made in the landmark cases in the Indian Legal fraternity.

OBJECTIVE OF THE STUDY
• The main objective of carrying out this study and formulating this research paper was to understand the ever mounting impediments of articulating the factor of crime- mens rea- when it came to statutory offences.
Any presumptions that are formulated based on the rules of interpretation and the courts.

- The impact it has on the society at large and whether it can be deemed as an offence of strict liability.
- Special reference to be given to Banking frauds while discussing the major reasons behind the sudden growth in them. The said analysis is drawn while understanding the origin and evolution of banking frauds in India and the role of the regulating authorities and the statues formed in order to ensure regulation, prevention, and redressal to all.

**RESEARCH METHODOLOGY**

The mode of research chosen for this research is doctrinal in most parts where the source of information is secondary in nature. But in order to ensure the credibility of the same, Primary sources such as official websites of the necessary regulatory authorities and the judgements provided by the courts for the cases discussed has been used.

**INTRODUCTION**

The phrase ‘mens rea’ appears in the *Leges Henrici* description of perjury- “reum non facit nisi mens rea”- which was acquired in the English law from the sermon of St. Augustine in his rites of crimes. It was also where the Latin maxim “actus non facit reum nisi mens sit rea” came into existence, which translates into ‘the act is not guilty unless the mind is guilty. Since before the evolution of law into the robust structure that it is today, in earlier times, church had the authority to influence its congregation. They preached about the importance of spiritual values and mental states. They decided that physical misconduct was a fruit of spiritual failure and it was the growing inner weakness that led to commitment of that moral wrong. Their laws were birthed from their beliefs of ideology of moral wrong and laws. They considered the loss of spiritual ability as a ‘damnnum insignia’. The church used its political power to control the government and making policies, statues and courts. And it is in these courts that the imperative nature of mental state of the accused was put to trial while committing a crime and this gave birth to the factor of ‘mens rea’. The definition of mens rea evolved itself into a major factor of the ins and outs of the criminal law.

The Crime in that period only consisted of moral wrongs which had physical repercussions. But soon with time it was divided into criminal wrongs and the tortious liabilities and the law advanced accordingly, taking the crimes being committed into consideration.

When the world economy was backhanded by the Great depression, the living standards and the livelihood of the people took a huge dive. The rate of unemployment hit the peak and this caused a global uproar. Every company and corporation’s major concern was to just stay afloat and the nominal people took to streets. This caused a massive growth in crimes being committed by these organisations and street crimes. These crimes were soon therefore stated under the category of ‘White Collar Crimes’ by jurists. They were the crimes related to the corporate sector and were essentially non-violent in nature. It was committed by businessmen, government
professionals who misused the authority of their positions in order to gain a materialistic benefit and an upper hand over others. Even after the situation improved, the crimes had already incorporated itself to the upper class of the society. And thus laws had to be developed in order to prohibit and punish those who were involved.

CHAPTER 1: STATUTES AND STATUTORY OFFENCES

A statute is a law written and produced by the Parliament. It originates from the judgements passed by the various appellate courts and the Supreme Court where they realize a vaccume has been created in the law. They are drafted as per the country’s constitution. It is the most imperative time of law which has been passed and approved by both the houses of the parliament by a majority.

As per the Code of Criminal Procedure, 1973, an ‘offence’\(^1\) is described as “Any act or omission made punishable by any law for the time being in force and includes any act in respect of which a complaint may be made under section 20 of the Tattle-Trespass Act, 1871.” These offences are related to the ones mentioned in the code, but the ones which are introduced under any stature, like that relating to taxation, national security, banking, fraud, corruption, etc. they are referred to as Statutory offences. And when the parliament brings about any law or statute, it might include the prohibition clauses and the punishment clauses as the basic need of introducing a statute is to cover up the said vaccume, which is done by regulation and governance in the ambit of laws.

Offences are further simplified into two forms-

- **Malum in se and Malum Prohibitum.**

‘Malum in Se’ offences are inherently wrong and considered to be a social evil. Most of the heinous crimes such as murder, rape, etc. which stem from violence and gory are categorised under this type. These have developed over the past and have evolved themselves and hence are abhorred by the society at large using precedents of the courts and hence can also be considered as common law offences.

‘Malum Prohibitum’ offences on the other hand are considered wrong due to the laws made by a state. They are prohibited in order to maintain harmony in the society and to implement a better work structure in it. Traffic and Taxation laws can be considered apt examples of this.

The ideology of statutory offences is imperative in order to differentiate another important category of offences such as white collar offences which pose a huge threat to the society as well as the economy and hence has a lasting effect. In fact, in 1962, the Government of India under Lal Bahadur Shastri (the then Home Minister) set up a Committee (Santhanam Committee) on Prevention of Corruption\(^2\), which proposed certain socio-economic offences to be made a part of the Indian Penal Code, 1860 as a new Chapter. Following points were suggested by the committee for inclusion:

1. Offences calculated to prevent or obstruct the economic development of

\(^1\) Sec. 2(n)

the country and endanger its economic growth.
2. Evasion of taxes
3. Misuse of position by public servants in making contracts and disposal of public property, issuing of licences and colluding with the parties.
4. Delivery by individuals and industrial and commercial undertaking of goods not in accordance with the agreed specifications in the contract.
5. Profiteering, black-marketing and hoarding
6. Adulteration of foodstuffs and drugs.
7. Theft and misappropriation of public property and funds.
8. License trafficking.

And since these crimes were very detrimental for the society and for the economy at large, in order to protect the public interests, these were termed as statutory offences and hence were gravely punishable by law. Hence, the offences falling under this class are known as “Public Welfare Offences”. Hence, if a statute is enacted to recognize them as criminal offences, they would be Statutory Offences, commission of which would attract punishments.

CHAPTER 2: MENS REA

The Latin maxim “Actus non facit reum nisi mens sive rea” was derived from the belief of the sermon of the English church which was later developed into the maxim. It depicts a relation between mens rea and crime. Here mens is the wrongful intention which led to the execution of the wrongful deed. It says that until and unless the mind is also guilty of committing the crime, the act cannot make a person guilty. That the mere execution and violation of the law will not constitute to a crime.

Mens Rea is a technical term. It means some blameworthy condition of the mind, the absence of which on any particular occasion negatives the condition of crime. It is one of the essential ingredients of criminal liability. A criminal offence is said to have been committed only when an act, which is regarded as an offence in law, is done voluntarily. Hence, an act becomes criminal only when done with a guilty mind.

After mens rea was constituted in the criminal law, its meaning kept on evolving. In the case of Regina v. Prince, when the defendant had taken an underage girl ‘out of the possession’ of her father, reasonable believing that she was above the age of consent, the court had formed the basis that the defendant had behaved in an immoral manner and that itself was sufficient for imposing the criminal liability over him.

Further, in the case of Regina v Faulkner, a sailor named Faulkner had accidently set the ship on fire, while he was trying to steal rum from the ship’s hold which had caused severe damages. The court declared that since Faulkner had only intended to steal and not to destroy the ship, he didn’t have the intention to cause the said harm. Hence he wasn’t liable for the offence of burning a ship as the actions that occurred couldn’t have been foreseen by him.

And hence this paved the way for a shift in the notion of mens rea. There was no longer a single requirement of mens rea for all the offences instead now each offence had a

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3 L.R. 2 Cas. Res. 154 (1875)
4 13 Cox C.C 550 (1877)
different mens rea requirement. Liability was now imposed on the person who not only intended to cause a damage but had also expected to amount to an offence but still continued to do so.

The early comprehensions of the mens rea were very vague and incomplete, and had a lot of ambiguity. They didn’t give the court enough scope to come to a fair judgement. Thus, the interpretation of the word mens rea started evolving into the definition that it is today as the courts soon realised that the requirement of a guilty mind varies from offence to offence. An intention which would qualify the requirements in one crime might not be deemed to be useful in another.

It should be combined with the presence of wrongful intent. Further the mens rea is important to understand the severity of the crime committed. The essential ingredient is the blameworthy condition of the mind. Its absence can negate the liability. However the statement without a guilty mind there is no crime is subjected to certain exceptions such as strict liability imposed by a statute. Under strict liability, it is not necessary to show that a defendant possessed the relevant mens rea for the act committed. Such cases will be further discussed in the paper focusing on such statues which impose strict liability.

**Presumptions in requiring mens rea**

In statutory interpretation, certain presumptions are considered while constructing and interpreting the statues. The presumption that is pertinent here is that criminal offences in general entails mens rea. Almost all crimes that exist autonomously, of any statute require, for their commission, some culpable state of mind on the part of the actor. Where a statute constructs an offence, no matter how comprehensive and absolute the language of the statute is, it is usually understood to be silently necessitating that the element of mens rea be imported into the definition of the crime (offence) so defined, unless a contrary intention is express or implied. Hence, the plain words of a statute are read subject to a presumption (of arguable weight), which may be rebutted, that the general rule of law that no crime can be committed unless there is mens rea has not been ousted by the particular enactment.

In the case of *Brend v. Wood*, Lord Goddard, C.J. held that: “It is of the utmost importance for the protection of the liberty of the subject that a court should always bear in mind that, unless a statute, either clearly or by necessary implication, rules out mens rea as a constituent part of a crime, the court should not find a man guilty of an offence against the criminal law unless he has a guilty mind.”

In the present time, the offences provided by the statues have multiplied tenfold, to such an extent that becoming a law abiding citizen might be cumbersome to some people. And many a times, the element of mental guilt is absent. In the case of *Hobbs v Winchester Corp*, the court said that: “There is a clear balance of authority that in construing a modern statute, this presumption as to mens rea does not exist. Such statutes are not meant to punish the vicious will but to put pressure on the thoughtless and inefficient to do their whole duty in the interest of public health or safety or morals”.

Another turning point occurred during the stage of industrialization, liberalisation and globalisation when companies started to be negligent of the procedures use by them in order to achieve their desired product and

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5 L.T. 306 175(1946) 6 (1910) 2 K.B 471
services, and how over time lack of any safety precautions caused highly disastrous accidents to take place. One of such cases proved to be the Bhopal Gas Tragedy, where compromising on safety precautions and training of the employees in order to cut costs and make more profit ended in the death and radiation poisoning of hundreds living near the place of the accident. The said tragedy struck in 1984, when there was a MIC gas leak in the Union Carbide factory in Bhopal. Thousands died and many still suffer from the aftermath of it. The ideology of strict liability was derived in India after the case. Hence, the statues made were done so while taking public health into consideration. These statues lay down the standards and rules in order to regulate the quality of the products and services provided to the mass and to ensure that in the process of acquiring their materialistic needs, these companies don’t violate the rights of the people.

Hence, while importance of mens rea may still be paramount in some cases, these statutes are bought into existence without considering the requirements of mens rea in the commission of offences that one may commit under them. This caused an uproar in the legal society about the situations in which this presumption will not be applicable. In the case of Reynolds v. G.H. Austin & Sons Ltd, the court mentioned that, “Where the subject matter of the statute is the regulation for the public welfare of a particular activity – statutes regulating the sale of food and drink are to be found among the earliest examples – it can be and frequently has been inferred that the legislature intended that such activities should be carried out under conditions of strict liability. The presumption is that the statute or statutory instrument can be effectively enforced only if those in charge of the relevant activities are made responsible for seeing that they are complied with. When such a presumption is to be inferred, it displaces the ordinary presumption of mens rea. But, it is not enough merely to label the statute as one dealing with a grave social evil and from that to infer that strict liability was intended. It is pertinent also to inquire whether putting the defendant under strict liability will assist in the enforcement of the regulations. That means that there must be something he can do, directly or indirectly, which will promote the observance of the regulation. Unless this is so, there is no reason in penalizing him, and it cannot be inferred that the legislature imposed strict liability merely in order to find a luckless victim.”

Hence, it can be understood that, in order for this presumption to be satisfied and accepted, the strict liability must be obligatory to give practical effect to the legislative intention; and, the person charged with a breach of the statutory requirements must have had some opportunity of fostering their observation.

Conditions where there the presumptions are not used

One of the landmark cases of such an exception to the presumption was taken from the case of State of Maharashtra v. M.H. George, where the defendant was caught carrying gold slabs at the airport from Zurich. Since the permission to do so was denied between his flights, he had no possibility of knowing the newly imposed laws. The court

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7 1990 AIR 273
8 (1951) 2 K.B. 471
9 (1958) 1 W.L.R. 522
holding the majority said that Where the statute does not contain the word ‘knowingly’, the first thing to do is to examine the statute to see whether the ordinary presumption that mens rea is required applies or not.

Another predominant case was that of, Ranjit D Udeshi v State Of Maharashtra\textsuperscript{10} where the court held that, “We do not accept the argument that the prosecution must prove that the person who sells or keeps for sale any obscene object knows that it is obscene before he can be adjudged guilty.”.

They further justified that the prosecution need not prove something which may not be mentioned in the statute as a requirement against the accused.

There have been many examples where the court has openly enunciated that in the statutes where the it is not reclusive to prove the offender to have a mens rea has been mentioned, in those cases, it is duty bound to follow the laws made by the parliament and interpret them using the ‘literal rule’\textsuperscript{11} of interpretation.

Hence it can be easily derived that, the court sometimes has interpreted the clause of mens rea in order to serve justice and in many cases had categorised such offences which had a harsh and detrimental effect on the society at large, had construed it as a strict liability. And in many cases it was bound to by the literal meaning of the statute where the clause of mens rea was not subjected to vaccume but just ambiguity and hence had to interpret it literally. And while considering the offence under the ambit of strict liability, they take following ‘notions for strict liability’\textsuperscript{12} into considerations in order to even out the process.

1. Phraseology of the statutory provision creating an offence of strict liability and the requirement of the mens rea.
2. Objective of the said statute.
3. The scope of working of the statute and its factors of regulation in the society.

\textbf{CHAPTER 3- WHITE COLLAR OFFENCES}

The most influential criminologist of the 20th century and also a sociologist, Edwin Hardin Sutherland, for the first time in 1939, defined white collar crimes as “crimes committed by people who enjoy the high social status, great repute, and respectability in their occupation”. The five attributes of the given definition are:

- It is a crime.
- That is committed by an important person of the company.
- Who enjoys a high social status in the company?
- And has committed it in the course of his profession or occupation.
- There may be a violation of trust.

The first cases of a white collar crime to be recorded of was known as the Carrier’s case which was documented in 1473 in England where the agent who was relied to perform an act was caught stealing and using it for his own benefit. The court then had filed the case

\textsuperscript{10} (1967) 2 B 243
\textsuperscript{11} P.ST.J Langan, Maxwell on The Interpretation Of Statues, 12\textsuperscript{th} edition 16\textsuperscript{th} Impression (2008), Lexis Nexis.
\textsuperscript{12} State of Maharashtra v Mayer Hans George , AIR 1965 SC 722
for possession of illegal goods and misappropriate the contents. But the definition of white collar crimes came into picture much after this case. In the period of the great depression, when due to a traumatic economic crisis, people were left unemployed and achieving a living standard worth hand to mouth was difficult, then the people turned to crimes which were of this strata. In order to keep themselves afloat, increase competition and to eliminate any rival company in the market, corporations single handedly started taking part in such crimes.

After Sutherland had introduced the revived concept of white collar crimes, his general definition was termed as ambiguous by my jurists who stated that, his definition didn’t lay down any criteria for which status of people shall be included under this definition and who were the persons of responsibility. The term ‘person of high social status’ was deemed to be not clear. His definition was also criticised for not taking the economic status of the individual into considerations and the role of mens rea in the following.

In 1934, Albert Morris, had advance that, the illegal activities that people of high social status involved in during the course of their occupation, must be brought with the category of crime under which their illegal activity falls. He also asserted that it should be made punishable. Soon Sutherland came into the picture where he drew the distinction between white collar crimes and blue collar crimes and gave the criteria of the person who was to be accused of such crimes. And finally in 1941, the legal fraternity had accepted the definition an existence of the white collar crimes in the society and had started making laws in order to govern and regulate such activities.

Related to the corporate sector, white collar crimes are defined as non-violent crimes, committed by businessmen and government professionals. In simple words, crimes committed by people who acquire important positions in a company are called white collar crimes. India had shown unprecedented growth in commerce and technology over time, while has further led to growth in cyber-crimes in India. It has become a major cause behind its stunt in poverty and health sector. The rapid unregulated incline in the business, technology and politics has provided criminals to initiate newer ways to cause societal loss. The cut throat competition in the market has only encouraged the advancement of such crimes.

**Types Of White Collar Crimes**

In the past decade, Indian law enforcement agencies have been bellicosely investigating businesses that are implicated in any malfeasance or even non-compliance of license terms as required under statutes. Typically, most of the offences committed by companies fall in the category of economic offences. Banking frauds being committed are also being monitored. Indian courts have held that economic offences need to be considered as grave offences as they often have a higher degree of mens rea and involve deep-rooted conspiracies which result in huge loss of public funds and affect the economy and financial health of the country.

From its initial definition of the 1940s, white collar-crimes have evolved themselves over time. Now in the 21st century they branch out into Bank frauds (cheque frauds, illegalised loans, etc.), Bribery (bribery including public officials, foreign officials, witnesses,etc.),cyber-crimes ( stalking, terrorism, child pornography,etc.), In the
Banking frauds have been focused due to their most abrupt incline in the times of the pandemic when all the banking activities have shifted online and the scope of committing frauds has increased.

I. Bank Frauds

Bank frauds accounts for a criminal act where the person by illegal means, withdraws either money or assets from the bank or anything similar, hence benefitting from the products of its consequences. The fraud can also happen when the said person falsely represents or impersonates himself to be a bank or financial institution and withdraws money and financial assets from people.

Banking Frauds constitute a substantial percentage of white-collar offences being probed by the authorities. Unlike ordinary thefts and robberies, the amount misappropriated in these crimes runs into lakhs and crores of rupees hence damaging the economy to a higher scale. Bank fraud is a federal crime in many countries, defined as planning to obtain property or money from any federally insured financial institution. It is sometimes considered a white collar crime.

Bank frauds are being committed in following mannerisms:

1. Rogue Traders: The main objective of this to make more aggressive and risky investments from the institutions side and then going for market speculation in order to profit from it and camouflage the loss that occurred. The repetitive losses incurred by the bank drives out of millions of rupees and in many cases it loses its ability to still operate as a banking institution.

2. Fraudulent Loans: In this particular fraud, a borrower who is a business entity is controlled by a dishonest bank officer or an accomplice who then declares bankruptcy and in many cases the borrower is a fraud and is just a way in order to conceal and validate the huge transfer of money from the bank.

3. Wire transfers: These include the interbank, international fund transfer which the banks use in order to fix their accounts with each other and hence sometimes, using fraudulent documents and forged signatories the money gets wired to a different offshore account in a distant country which is deemed highly unlikely to recover.

4. Fraudulent documents: These documents are used in order to conceal and as an accessory to a white collar crime being committed.

5. Credit Card Frauds: In these, the genuine credit cards are manipulated, misused and altered. They can also be used in order to make counterfeits and used in telemarketing. The cases where genuine credit cards are obtained by using the personal details of another and then misused also come under this criteria.

6. Impersonation or theft of identity: The cases where the information obtained out of a victim is used in order to apply for identity cards, accounts, credits in the person’s name which is thereby misused comes under this.

7. Phishing or Internet Fraud: It operates by sending forged e-mails, impersonating a

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13 Indian Penal Code 1860
bank or any financial institution mentioning any auction, payment, etc., and the mail directs the user to another site which is a replica of the said bank where while updating or filling up any personal details, the data is accessed and utilised Using Trojans in order to monitor the usage and activity of a person in order to gain any personal information has also become very predominant in the past decade.

8. Money Laundering: It is a very dynamic crime and has many variants but the most common one can be where the person can buy securities for cash, then place it into a safety deposit in a one bank and apply for a loan over it at another bank defaulting on it. The securities in the question would still be worth their initial value and the complete transaction is done to disguise the original source of the funds.

9. ATM Skimming: This is by far the most effective of planning out a bank fraud. It nothing but illegally cloning with the objective of capturing the magnetic chip installed in the credit or debit card hence getting all the data including the pin code data and then making fraudulent withdrawals and transactions illegally. In many cases external aided equipment are hidden in the ATM machines in order to accomplish such tasks.

Catching these crimes are difficult and in many cases next to impossible due to the upgrade in the technology being used over time. And therefore special cells have been formed in order to monitor any or all major transactions of the banks in order to create Special Forces for capturing such cyber criminals.

The government in the recent times has also altered and introduced new statues in order to ensure that no loophole is available for such crimes to be committed.

- Prevention Of Money Laundering Act, 2002
- Central Vigilance Commission Act, 2003
- Right to Information Act, 2003
- Companies Act, 2013
- The special court (trial of offences relation to transactions in securities) Act, 1992
- Whistle Blowers Protection Act, 2011
- The negotiable Instrument Act, 1881
- The income tax Act, 1961
- Indian Penal Code, 1860
- The information Technology Act, 2005

These with the inclusion of white collar crimes in the legal fraternity ensures a better knowledge of such crimes, thereby making it detectable and hence the perpetrator can be charged and bought to justice.

Authorities like SEBI have been trying to get a hold of basic structure of such crimes and making a fool proof system in order to ensure that the commission of such crimes gets minimalised in India.

Landmark Cases of Bank Frauds in India and the role of SEBI

SEBI I accounted as the most empowered robust authorities out of all the regulatory authorities. It is “trias politica”\(^\text{14}\) and hence has an internal system of the executive, legislature and the judiciary. It is responsible as a host for all the market intermediaries,

\(^{14}\) Theory of Trias Politica by Baron de Montesquieu, political French philosopher and jurist
conducting investigation of fraudulent and manipulative activities and thereby making laws, regulations, guidelines and circulars in order to take the situation under control.

In 1992, India faced one of biggest landmark case of white collar crimes, Harshad S. Mehta v Central Bureau Of Investigation\(^\text{15}\), namely ‘the Harshad Mehta Fraud’ where the offender, Harshad Mehta was a stock broker of BSE. It was a banking fraud where the loopholes of the system were violated and huge funds were drained off from the inter-bank transactions and then ploughed back which caused an abrupt incline in the Sensex and when the fraud was discovered, it fell drastically by 570 points causing huge losses and spreading deterrents in the complete system. This scam though caused a lot of damage but it came as a boon for the system as the SEBI worked on the loopholes and formulated the regulations for prohibiting insider trading, regulating brokers and for merchant bankers which when were added to the regulations added in the SEBI Act.

The next blow came in the form of the Ketan Parekh Case where a loan of a whopping 1250 crores was taken from the Global Trust Bank using inflated K-10 scrips as collateral. Huge orders were placed and the Sensex crashed by a 176 points. As an after math, SEBI had reduced the settlement cycle and the current T+2 cycle was introduced, stock exchanges were demutualised, badla trading was banned and exchange derivatives were introduces to name a few changes that changed the face of the securities sector.

The case of IPO was detected when the stock exchange severe irregularities in the Yes Bank IPO which was a aftermath of the possible large scale off-market transactions. This led to the SEBI (Disclosure and investor protection) guidelines 2000 and the 2009 issue regarding ‘issuing capital and disclosure requirement’

SEBI was once again put to test by the Sahara Scheme, when the two of the Sahara group companies had issued instruments to more than 50 people (making it a public issue), which in fact was not legal for a private company to indulge itself into.

Over the period of more than one decade, Indian economy has found itself in the clutches of many fraudsters from the scandals of Vijay Mallya, Coalgate scam, 2G Spectrum scam, the cases of SEBI v Burman Plantation, Abhay Chautala v CBI\(^\text{16}\), Binod Kumar v State of Jharkhand\(^\text{17}\), Common Wealth Games Scam, Agustawestland chopper scam, satyam scam to the infamous Nirav Modi PNB Bank Fraud eliciting huge funds.

**CHAPTER 4: MENS REA VIS-À-VIS WHITE COLLAR CRIMES**

These scams and frauds have left an everlasting effect on the Indian economy as well as the legal structure of the nation. The backhanded aftermath of such crimes cannot be amounted to a specific amount as it effects the society at large and surmount to many other related crimes whose links are too muddled to draw a parallel

They not only cause huge amounts of materialistic loss to the economy, abrupt surges in the Sensex, the banking system, investors, companies and organisations reach the level of bankruptcy, the rate of unemployment surges as these companies

\(^{15}\) 1992 (24) DRJ 392 ILR 1993 DEL 274

\(^{16}\) (2011) 7 SCC 141

\(^{17}\) C.W.J.C. No. 11435 of 1997
and institutions shut down, the customers bear the backlash and other nit-grits of the system, but are also deemed to be extremely detrimental for the society at large as it causes an incline in other sectors of crimes as well as an outcome of the orchestrated process of concealment of them. Murders, extortion, laundering and kidnappings are just the peak of the iceberg of the consequences of these crimes.

When it comes to dismantling the profound structure of any white collar crime in the system, definition of mens rea has evolved itself over time. It is no longer an escape for the crimes committed as now it falls on the prosecution and the agencies to prove that the offender has committed a crime, has concealed a crime or has acted in furtherance of the crime-making the burden fall on them to prove intent without any reasonable doubt.

The intent is proven usually by assembling the said case in such a manner in order to portray how the said activities carried out by the person has resulted in the gain of money, property, funds, securities, any personal or business related benefit.

The agencies take the facts in consideration that orchestrating a white collar crime is not easy. It requires a particular mind set, required knowledge to make the deal through, shady deals, camouflaging actions being transactions, cold minded strategy of deceit, fraud and misrepresentation. Unlike its counterpart type where the mind-set is governed by an immediate kink in one’s emotions and thinking capacity which are a by-product of one’s emotions which in turn pushes them to partake into momentary, sporadic and desperate decisions, white collar criminals are people of extreme proficiency. Every act is calculated and fool proofed. And since these are the acts being committed by socials who are higher on the social stairs, adds ambiguity and unsureness to the situation while bringing surpassing resources into the mix.

**CONCLUSION**

Through the vast and in-depth depth of the research paper, it is analysed that, the non-violent nature of the white collar crimes sometimes make it more susceptible to the thinking that it not a ‘real crime’ when compared to other heinous crimes. The fact that these crimes cause a bigger impact on the economy at large, on a bigger section people is somewhat dissolved by the people involved. The rapid incline of these crimes is an indication for the authorities to revolutionize the structure of the system.

Since these crimes are done in an angst of fulfilling one’s greed, achieving desired hold over the market and breaking down the system into the situation that suits them the most, it paves the way for a highly skilled group of criminals to emerge. In this case where there is a lack of implementation of the laws and vacuums that are thereby created, it encourages more and more people to get involved in such crimes. It has stunted the growth in the national economy by affecting the health systems, manufacturing industries, across many state agencies, state development authorities. Even the legal fraternity has seen its fair share of such crimes.

The major factor behind a the abrupt growth of these offences the increasing scope of development in technology which
acts as a resource while committing such crimes, and the lack of regulations in the forms of statutes and laws which are not ambiguous in nature.

Through the said research, one of the biggest loopholes of white collar crimes was unsurfaced. The ideology of the ‘lesser crime’ and the lose-handed nature of the society when it comes to that. This not only encourages the potential criminals, it also decreases the faith that the law abiding citizens have on the robust structure of the Indian judiciary.

It should be no question whether white collar crimes are a common offense or a strict liability offense. The extent of damage caused should be enough to account them as a ‘strict liability offense’. Reformative measure that can be taken are:

1. More stringent regulatory laws with a strong system in order to implement them should be formulated giving these crimes no scope of being carried out.
2. The punishments and penalties should be equivalent with the extent of injuries caused.
3. Setting up fast track courts which specialise in such cases is also essential in order to ensure redressal of such cases.
4. Training of the government officials who are involved in the governing authorities and providing them the knowledge of handling similar cases will ensure a better rate of solving these cases.
5. More focus should be given to such crimes through the means of electronic and print media and the ways it can happen and what is the course of actions for the same. The system so constructed would be well equipped for the scenario today.

“Any system that values profit over human life is a very dangerous one indeed. Simply put, it lacks values, and such a system will eventually collapse once its true light is discovered by the masses. Though some say that capitalism is a modern system, corruption has been the source for the demise of every great civilization.”

— Suzy Kassem, Rise Up and Salute the Sun: The Writings of Suzy Kassem

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