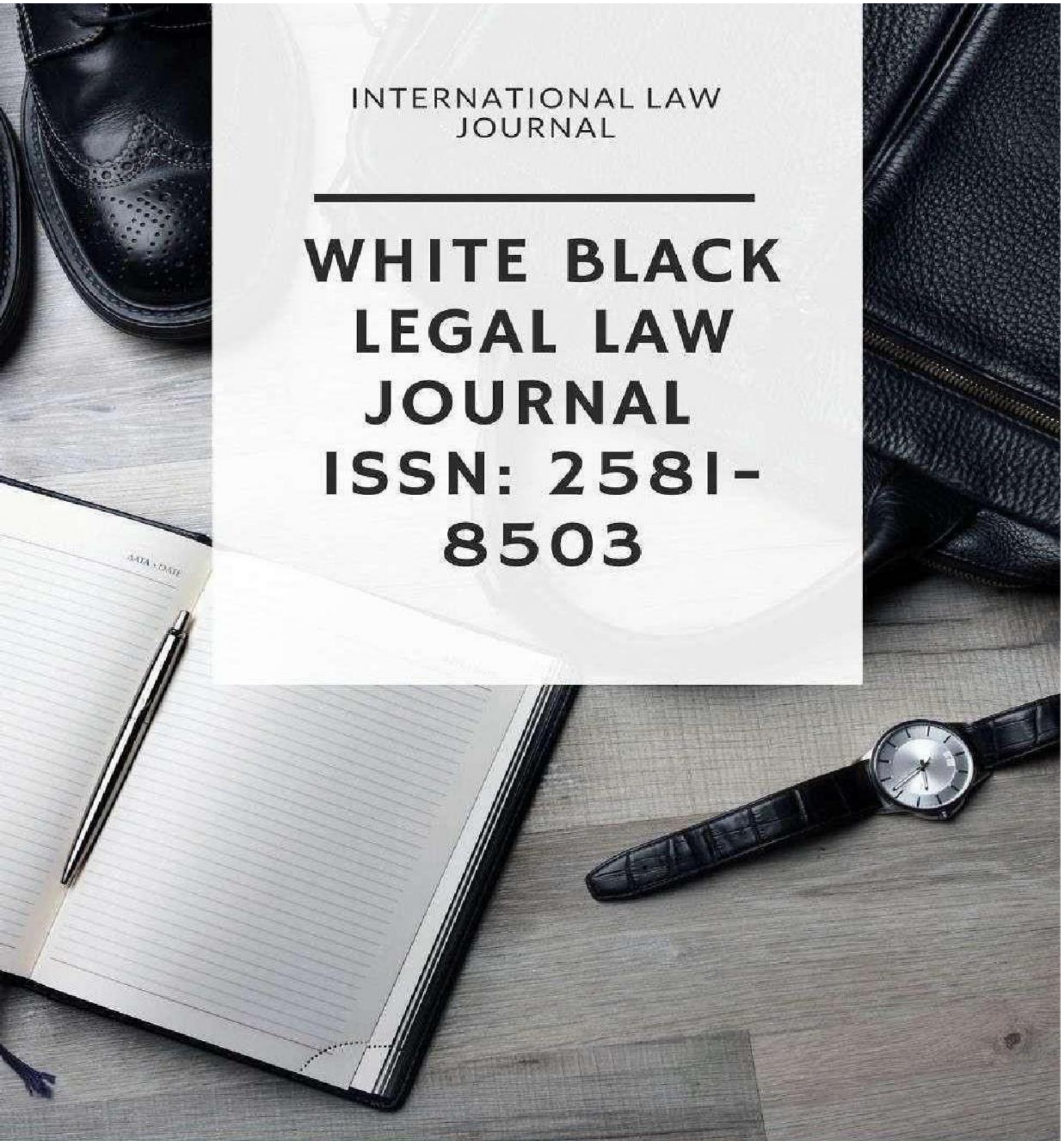




INTERNATIONAL LAW
JOURNAL

**WHITE BLACK
LEGAL LAW
JOURNAL**
**ISSN: 2581-
8503**

Peer - Reviewed & Refereed Journal

The Law Journal strives to provide a platform for discussion of International as well as National Developments in the Field of Law.

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A COMPARATIVE ANALYSIS OF WHITE COLLAR CRIME- WITH SPECIAL REFERENCE TO U.K., U.S.A. AND INDIA

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I. Introduction:

The earliest instance of white collar crime can be traced back to the 15th Century in England. In the famous Carrier's case of 1473, wherein, a trader, entrusted with the transportation of wool, made an attempt to steal some for him. This led to the Star Chamber and Exchequer Chamber of the English Court of Law to apply the "breaking bulk"¹ doctrine.²

The idea of white collar crime emerged from the need to classify a separate and distinct category of crimes which are not common crimes like burglary, murder etc.³

"White collar crime is a crime committed by a person of respectability and social status in the course of their occupation"

This was the first ever definition of white collar crime, defined by the eminent sociologist, Edwin Sutherland in the year 1939. The term 'white collar crime' is currently inseparable from the full scope of fraudulent activities perpetrated by business and government experts. These wrongdoings are portrayed by misdirection, disguise, or infringement of trust and do not involve the threat of physical force or violence. The inspiration driving these violations is monetary—to get or try not to lose cash, property, or administrations or to get an individual or business advantage.

Even though these crimes are non violent in nature with the absence of physical harm, these are not harmless wrongdoings. With the help of a single scam, organizations can be wiped out; families can be demolished due to the clearing out of their life savings; or financial investors

can lose huge amounts of money (or even all of the three).⁴ All of these are potential threats to any country's economy.

These crimes can be further divided into two categories:

1. Occupational Crimes: These crimes are committed against legitimate institutions (can be either businesses or government institutions) and are committed by individuals of respectable social stature. Some examples are tax evasion, embezzlement of funds etc.
2. Corporate Crimes: These are committed by institutions for fulfilling their own interest. Offences like Insider Trading, Ponzi Schemes etc. are examples of corporate white collar crimes.⁵

Looking at the definition and classification of these crimes, it is natural to assume that white collar criminals are all from the upper class. But, in the present times, the spectrum for these criminals can range from executives, upper and middle management to normal accountants as well. United Nations uses the term "abuse of power" when it comes to these crimes.⁶

A Few Examples of White Collar Crime:

1. Bank Fraud: Engaging in activities to defraud a bank or using unlawful and illegal means to obtain assets held by financial institutions.
2. Blackmail: Demanding money from another individual by use of threat to cause physical harm or injury or to disclose classified information.
3. Bribery: Offering another person financial gain or material goods or gift in exchange for control over their actions. Both the person who offers the bribe and the person accepting the bribe are criminals in this situation.
4. Computer Fraud: Hacking or stealing information of another person.
5. Embezzlement: Using money or property entrusted for personal gain.
6. Extortion: Illegally obtaining another's property by use of actual force or by threatening to use force.
7. Insider-Trading: Using confidential information to trade in shares of public corporations.
8. Money-Laundering: Concealing the origin of money obtained via illegal and unlawful means.
9. Tax fraud: Evasion of tax by provision of incorrect information while filing of tax forms or illegally transferring property to avoid paying tax.⁷

II. Legislations:

With the advancement of commerce and technology, there is a rapid growth in white collar crime all over the world and accordingly, nations have come up with their own laws and regulations to tackle this problem.

Since this paper aims at a comparative study of white collar crime with focus on India, U.K. and U.S.A., let us first look at the respective regulatory legislations of these countries first.

1. India:

There are various legislations enacted by the Government of India, the violation of which will lead to white-collar criminality. These include:

1. The Companies Act, 2013
2. The Income Tax Act, 1961
3. Indian Penal Code, 1860
4. The Essential Commodities Act, 1955
5. The Prevention of Corruption Act, 1988
6. The Negotiable Instrument Act, 1881
7. The Prevention of Money laundering Act, 2002
8. The Information Technology Act, 2000
9. The Imports and Exports (control) Act, 1947
10. The Special Court (Trial of offences relation to Transactions in Securities) Act, 1992
11. The Central Vigilance Commission Act, 2003
12. The Industrial (Development and Regulation) Act, 1951
13. The Foreign Exchange (Regulation) Act, 1973
14. The Fugitive Economic Offenders Act, 2018

Crimes such as bribery, corruption, counterfeiting of coins, currency and government stamps, offences related to weights and measures, adulteration of food stuffs and drugs, misappropriation of public property, criminal breach of trust, cheating, forgery, bank fraud, insurance fraud, credit card fraud etc. are regulated by the Indian Penal Code, 1860. When it comes to money laundering, the Government of India has taken several steps to tackle this issue. Several directions have been issued by the Reserve Bank of India (RBI) to be strictly followed by the banks under Know Your Customer (KYC) guidelines.

The Companies Act, 2013, provides a list of activities that can be considered as fraud and lays down specific sanctions for the same.

As the world becomes technologically advanced, cyber crimes are increasing more and more. The Information Technology Act, 2000 regulates computer-related crimes and authentication of information exchanged in commercial transactions.

2. U.K.:

The legislations enacted in U.K. for regulating white collar crime are given below:

1. The Proceeds of Crime Act, 2002
2. The Fraud Act, 2006
3. The Companies Act, 2006
4. The Finance Act, 2006
5. The Theft Act, 1968
6. The Bribery Act, 2010
7. The Computer Misuse Act, 1990

Offences in U.K. are categorized in accordance with the seriousness of the crime. These can be of three types:

1. Summary Offences: They can be tried only in Magistrate's Courts. These offences are created by statute and are tried in the absence of a jury. The Magistrate's Courts have limited power of sentencing. The upper limit is up to 12 months imprisonment.
2. Indictable Offences: They can only be tried in Crown Courts and in the presence of a jury. This category consists of offences that are serious and also those that are fit to be tried as summary offences.
3. Offences Triable either way: As the name suggests, this category is flexible. Unless the case is of exceptional nature, the defendant can choose either a summary trial in the Magistrate's Court or a trial on indictment in the Crown's Court. The prerogative lies with the Magistrate in this regard to choose from the two.

Most of the corporations in U.K. (including public and private limited companies and LLP) are treated as a separate legal entity which is distinct from the natural persons comprising the management. Thus, when there is an absence of a specific legislation, corporate liability may be established either vicariously or non- vicariously.

3. U.S.A:

The legislations governing white collar crime in the U.S.A. are listed below:

1. The Sherman Act, 1890
2. The Federal Trade Commission Act, 1914
3. The Clayton Act, 1914

The three aforementioned laws are commonly known as the “Antitrust Laws”. They are revised from time to time but remain the three core federal laws to regular white collar crime.⁸

The antitrust laws prohibit unlawful mergers and business practices in everyday terms, leaving it to the courts to decide which ones are illegal with respect to the facts of every individual case. Courts have applied the antitrust laws to evolving markets, from a period of pony and carriages to the present computerized age. However for more than 100 years, the antitrust laws have had a similar essential target: to ensure fair competition to serve the consumers, ensuring there are solid motivators for organizations and businesses to work proficiently, hold costs down, and keep quality up.

The Sherman Act, 1890 prohibits unreasonable restraint of trade. The penalties for violations can be severe. The enforcement actions under this Act can be both civil and criminal. Criminal penalties of up to \$100 million for a corporation and \$1 million for an individual along with 10 years of imprisonment may be imposed. If the gain of the conspirators exceeds \$100 million, then the maximum fine may be increased to twice the amount of gain or twice the amount of losses incurred by the victims.

The Federal Trade Commission Act, 1914 bans unfair methods of competition and deceptive acts and practices. As per the Supreme Court’s decision, all violations of the Sherman Act are considered to be violations of the Federal Trade Commission Act as well. The Clayton Act, 1914 specifically addressed those practices not clearly prohibited by the Sherman Act e.g. mergers and interlocking directorates.⁹ In 1936 the Clayton Act was amended to ban discriminatory prices, services and allowances in dealings between merchants. In 1976, the Act was again amended to mandate notification to the government in advance in case of companies planning large mergers and acquisitions. The Act also authorizes suing for triple damages by private parties in instances when they have been harmed by a conduct that violates either the Sherman or the Clayton Act and can obtain a Court order prohibiting the anticompetitive

practice in future.¹⁰

In addition to the aforementioned federal statutes, most states in the U.S.A. have antitrust laws being enforced by state attorneys general or private plaintiffs.

III. Enforcement Agencies:

1. India:

With the Indian economy growing faster than ever, enforcement agencies such as the Central Investigative Agency (CBI), Serious Fraud Investigation Office (SFIO), Enforcement Directorate (ED), Income Tax (IT), Department of Vigilance of Ministry of Finance, Securities and Exchange Board of India (SEBI), Reserve Bank of India (RBI) and Insurance Regulatory and Development Authority (IRDA) are appropriately motivated to work on their abilities to address the difficulties of the changing situation. These divisions are the eyes and ears of the Government of India.¹¹

2. U.K.:

The Serious Fraud Office (SFO), the National Crime Agency (NCA) and the Financial Conduct Authority (FCA) are the main bodies empowered to investigate and prosecute for white collar crimes.

The SFO investigates the most serious cases of fraud, bribery and corruption.

The NCA receives and processes suspicious activity reports made under the Proceeds of Crime Act, 2002 (POCA).

FCA regulates financial services. It is empowered to take both civil and criminal actions.¹² It is a regulator of the financial markets, similar to SEBI in India.

3. U.S.A.:

Since the U.S.A. has a federal system of government, there are enforcement agencies at federal, state and local levels. The Federal Bureau of Investigation (FBI) is the primary federal law enforcement agency. The U.S. Department of Justice (DoJ)- Antitrust Division is the leading prosecuting agency at the federal level.¹³ The Federal Trade Commission (FTC) is also an enforcement agency at the federal level. The powers of DoJ and FTC may overlap in some cases, but in reality, both the agencies complement each other by developing individual expertise in particular areas.

The State Attorneys General can assume a significant part in antitrust implementation on issues of specific concern for local businesses and consumers. The State Attorney General may likewise move to enforce the state's own antitrust laws. Private parties like businesses and individuals may also file for injunctions from the court against anticompetitive practices and may seek relief and damages under the Sherman and Clayton Acts as well as the state antitrust laws.¹⁴

IV. Case Studies:

1. India:

Harshad S. Mehta vs Central Bureau Of Investigation¹⁵- Being one of the biggest white collar crimes in India, this case has been talked about for a very long time. Harshad Mehta was a stock broker who was able to obtain fake bank receipts from small banks and used them as security in other banks in exchange for cash. He used this capital to inflate the stock prices and was able to embezzle 5000 crore INR in the process. This act alone caused the stock market to crash and affected the officials of the bank at personal level as well.

The Government of India v. Nirav Deepak Modi¹⁶ (PNB fraud case)- Nirav Modi (the accused), a billionaire businessman dealing in luxury diamond jewelry, gave fraudulent letters of undertaking (LOU) worth 11,400 crore INR issued by The Punjab National Bank (PNB), Brady House, Fort, Mumbai. The Bank detected the unlawful, fraudulent and unauthorized transactions and immediately informed the Bombay Stock Exchange regarding the same. Subsequently, the Central Bureau of Investigation (CBI) received two complaints against the accused from PNB. He has been charged for criminal conspiracy, criminal breach of trust, cheating, corruption, money laundering, fraud, embezzlement and breach of contract by the Government of India. Mr. Nirav Modi is currently seeking political asylum in U.K. This case shook the country and further led to enactment of The Fugitive Economic Offenders Act, 2018. Subsequently, in March 2018, the Reserve Bank of India (RBI) did away with banking instruments such as Letter of Understanding (LoU) and Letter of Comfort (LoC) in efforts to reduce loopholes as much as possible and make improvements in the banks' due diligence processes.

2. U.K.:

R v. Asil Nadir¹⁷: Asil Nadir (accused) was the CEO of Polly Peck International, a British textile company, in 1980. In 1991, the company collapsed with debts amounting to 1.3 billion

Euros which led to Asil Nadir fleeing and seeking refuge in Northern Cyprus in 1993. After over six months of trial, Mr. Nadir was convicted of ten counts of theft and an order for compensation of 5 billion Euros was passed by the court.

3. U.S.A.:

Enron Scandal (In re Enron¹⁸): The Enron Corporation, with revenues exceeding \$100 billion and being named as “America’s Most Innovative Company”, was a corporate giant in the beginning of the 2000s. However, while it was rising in the 90’s, there were rumors of illegal accounting procedures being used by the company. As a result, the corporation failed terribly and in the end, became a bankrupt business. This scandal shook the Wall Street by putting many employees in a financial crisis. The corporation encountered huge debts in its name and tried to conceal these with the help of special economic entities and special purpose vehicles (SPVs). This scandal affected the corporation to the extent that its shares that were once valued at \$90.75 came down to a record low value of \$0.26 per share.

V. Conclusion:

Even though white collar crime is not physically harmful or violent towards any individual, it does disrupt and uproot lives and livelihood. From the comparative analysis we can see that nations have recognized these offences to be serious in nature and are well aware of the kind of impact even a single unlawful transaction can pose. Not only does it affect businesses and corporations, it also affects the employees and investors by robbing them of their hard earned money. There have been instances where people have committed suicide due to the financial losses they have incurred. When bureaucrats and top level management are entrusted with responsibilities, they should realize that they are in power because they are answerable to the people for their actions as well. A single selfish step towards their personal gain causes the nation’s economy to crash and affects people at a personal level as well. With the increase in technology, trade and commerce knows no boundaries and we see newer versions of white collar crime with every passing year. It is good to see nations coming up with more and more legislations and modifying their existing legislations to combat these crimes and bring the perpetrators to justice. A common trend that we can see from the case laws is that the offenders tend to flee their country of residence and seek asylum abroad. This makes the extradition process quite complicated and convoluted and it’s not easy to arrest these individuals. Nations should work on their extradition laws and enter into treaties with each other in this respect.

1. This doctrine refers to a rule followed in old English Law whereby it was held that if a bailee having lawful possession of property in bulk breaks it open and misappropriates the contents, then he is guilty of larceny. In case the bailee wrongfully takes the property without opening the container, the act was regarded as theft. The breaking-bulk doctrine is also known as the breaking- bale doctrine.
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