“The practitioners of evil the hoarders the profiteers the blackmarketeers and speculators are the worst enemies of our society. They have to be dealt with sternly. However well placed important and influential they may be. If we acquiesce in wrongdoing, people will lose faith in us”

– Dr. RadhaKrishnan.

2.1 Introduction

Corporate criminality has become a global phenomenon with the advance of commerce and technology like any other country; India is equally in the grip of corporate criminality. Corporate crime, in India, is flourishing every day in new forms the problem if Corporate crime is very serious in India. Business communities of the country of large and small merchants are basically dishonest in most. Nowhere in the world businessmen get rich so quickly as they do in India hoarding, profiteering and black market trading of essential commodities traders has become a chronic problem for the government. The sathanam committee report in its findings gave a vivid picture of white collar crimes committed lay persons of respectability such as business man industrialists contractors and supplies as also the corrupt public officials.

2.2 Scope of Corporate Crime

Corporate Crimes they are spreading like a rapid in every sphere of society. like a rapid fire in every sphere of society. Corporate crime committed

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1Sathnam committee report, pp251-253
by persons who having prestigious statues in society. This crime also called power crime. Because in present society person having power reach person have their high connection in society. The corporation considered as the vehicle for the crime.

2.3 Nature of Corporate Crime

Corporate crime demonstrate that corporate law breaking cover a very wide range of misbehavior, much of it serious; among these violation are accounting malpractice, including false statements of corporate assets and profit; occupational safety and health hazardous; unfair labour practice; the manufacturing and sale of hazardous product; false and misleading advertisements; environmental violation of air and air pollution and illegal dumping of hazardous mater; illegal domestic political contribution and bribing of foreign official for corporate benefit.

Nature of Corporate crime overlap with
2.3.1 white collar crime
2.3.2 Organize crime
2.3.3 State corporate crime.

2.3.1 White collar crime

Necessity is not always the motive behind commission of a crime. This idea evolved with the criminologist and sociologist Edwin H. Sutherland in the year 1939, Who popularized the term white collar crimes by defining such a crime as one committed by a person of respectability and high social status in the course of his occupation. Sutherland also included crimes committed by corporation and other legal entities within his definition.

Sutherland’s study of white collar crime was prompted by the view that criminology had incorrectly focused on social and economic determinants of crime. Such as family background and level of wealth Sutherland was of a
view that crime is committed at every level of society and by persons of widely divergent socio economic backgrounds.

It is true to the common knowledge that there are certain profession which offer lucrative opportunities for criminal acts and unethical practices which is very often overlooked by the general mass of the society. There have been crooks and persons who are not following ethics in business various other professions, Who tends to become unscrupulous because of no reason apart from thirst of gaining more and more for themselves. These deviants have least regards for ethical and moral human values. Therefore they carry on their illegal activities with impunity without the fear of loss of respect and prestige. These crimes are of the nature of “White collar crimes” Which is the essential out come of the development of the competent economy of the twenty first century. Talking about the prevalence of white collar crimes in India they are spreading like a rapid fire in every sphere of society.

**2.3.1.1 Chronological Background of the Emergence of White Collar Crimes**

The first documented case of white collar crime law registered in 15th century is England. There has been a case popularly known as the Carrier’s case of 1473, where the agent was entrusted to transport wool and he attempted to steal some of it for him. Therefore, the star chamber and Exchequer chamber of the English Court of law adopted the braking bulk doctrine as it constituted the crime of larceny. Means the crime of theft. However, the growth of industrial capitalism in the eighteenth century ushered a new history of crime and criminality.

The base of industrial capitalism is based on coercion and robbery. Before discussing the topic it is necessary to understand the meaning of capitalism. The Process of emergence of these conditioned was termed by karl Marx as primitive accumulation while in the word of Adam Smith, it was previous accumulation. Therefore the Dutch Marxist, William Bonger contended that
criminal attitude develops among the working class under capitalism due to conditions of misery and at the same time the criminal attitude develop among the bourgeoisie from the avarice fostered when capitalism strive. It succeeded in United States of America in 1890, when congress passed the Sherman Antitrust act which took the initiative to make the monopolistic illegal. Other industrialized countries like Great Britain had a history of penalties involving white collar crime by that same time, but it was not as sweeping as the Sherman Act. Some nations implemented a smattering of these laws, Known as competition or antitrust law, but did not have a strong binding force for a long time. But more anti white collar crime sentiment rose in the late 19th century and early 20th century in the United States as result of group of Journalists Known as muckrakers exposed gave rise to public resentment and thereby called for in some reform. By 1914, Congress attempted to solidify and Strengthen the sentiment laid down by the Sherrman Act, which was used against labour Unions, with the clayton Antiturst Act. This Act was much stricter and went much further than Sherman Act in making particular monopolistic practices illegal.

2.3.1.2 Historical Background

The concept of white collar crime is usually associated with E.H. Sutherland whose penetrating work in this area focused the attention of criminologists on its demoralizing effect on the total crime picture. Sutherland pointed out that besides the traditional crimes such as assault, robbery, dacoits, murder, rape, kidnapping and other act involving violence, there are certain anti social activities which are the person of persons of upper starts carry on in course of their occupation or business these activities for long time were accepted as a part of usual business tactics necessary for a shrewd professional man for his success in professional or business. Thus any complaint against such tactics often went unheeded and unpunished.

It must, however be stated that Sutherland was preceded by other writers who focused attention on the dangers to society from upper socio-economic
group who exploited the accepted economic system to the detriment of common massed. In this research researcher underlined the growing incidence of crime as an organized business and its evil effect on society. In 1934, Morris drew attention to the necessity of a change in emphasis regarding crime. He asserted that anti-social activities of persons of high status committed in course of their profession must be brought within the category of crime and should be made punishable. Finally E.H. Sutherland through his pioneering work emphasized that these upper world crimes which are committed by the person of upper socio-economic group in course of their occupation violating the trust, should be termed “White collar crime” so as to be distinguished from traditional crime which he called, “Blue collar crime”. Thus, he observed that if a broker shoots his wife’s lover, that is not a white collar crime, but if he violate the law and is convicted in connection with his business, he is a white collar criminal.

Sutherland farther pointed out that white collar crimes differ from the crimes committed by criminal syndicates. This distinction could be based on the extent of presumed respectability. Thus, if a person who belongs to a respectable class of society and possesses some degree of good reputation, sells shoddy goods he is committing a white collar crime, But if a group of persons unknown to their victims sells the same type of shoddy goods, that would not be a white collar crime.

Sutherland examined the depredations of about seventy large corporations involved in white collar crimes and observed that the charges against them included contracts, combinations or conspiracies in restraints of trade, misrepresentation in advertising, infringements against copyrights, financial fraud and violation of trust, breach of war regulation and others miscellaneous offences. But people knew very little about the trickery of these big business criminals and even if they knew they were apathetic towards the problem because of the fact that “The legal battles involved there in are dragged out for years in the courts, with the result that the charges are forgotten long before they are settled.”

(21)
2.3.1.3 Meaning and Definition of White collar crime

No doubt it is also crime against society but it is different than ordinary crimes. It is different in the sense that victim is not any individual in White collar crime as society is victim there some of the criminologist and penologist given following definitions of white collar crime.

According to Edlehere “ An illegal act or series of illegal acts committed by non physical kinds of means and by concealment or guilt, to obtain money or property or to obtain business advantage”.

According to Sutherland “Crime committed by persons of respectability and high social status in course of their occupation”

According to Federal Buro of Investigation “Those illegal acts which are characterized by deceit concealment or violation of trust and which are not dependent upon the application or threat of physical force or violations”

According to Paul Tappan “White collar crime is a special type of solitary professional criminality. It involves real violation of criminal law systematically or repeated by business, professional and clerical workers in addition to their occupation”.

According to Sir Walter Reckless “White collar crime represent the offence of businessmen who are in position to determine the policies and activities of business”.

The concept of “ White collar crime “ found it’s place in criminology for the first time in 1941 when Sutherland observed². He defined white collar crime as a “Crime committed by persons of respectability and high social status in course of their occupation.” A white collar criminal belong to upper socio economic class who violate the criminal law while conducting his professional qualities. Thus misrepresentation through fraudulent advertisements, infringement

² American sociology Review VOL. V No.1
of patents, copyrights and trade marks etc., are frequently resorted to by manufactures , industrialists and other persons of repute in course of their occupation with a view to earning huge profits. Other illustration of white collar criminality include publication of fabricated balance sheets and profit and loss account of business, passing of goods, concealment of defect in the commodity for sale etc.

Sutherland farther pointed out that a white collar crime is more dangerous to society than ordinary crimes because the financial loss from burglaries, robberies larcenies etc. the most dismissal aspect of white collar crimes is that there is no effective programme for the enforcement of criminal law against them and the influential persons involved in these crimes are able to resist enforcement of law against themselves.

These white collar crimes by their very nature are such that the injury or damage caused as a result of them is so widely diffused in the large body of society that their gravity in regard to individual victim is almost negligible. It is probably for this reason that late these crimes did not attract much attention as they do not carry with them and loss of social status of the offender even if he is caught detected. There is yet another reason for white collar criminals escaping prosecution. In case of misrepresentation concealment or fraud etc., The court usually place reliance on the principal of caveat emptor, which signifies that the purchaser must enter in to a deal with open eyes and guard himself against ordinary dishonesty of the vendor. As a result of this attitude of the court there was enormous increase in white collar crime during the period of depression in 1930’s in United States. Perhaps it is for this reason that American President Roosenelt in 1933 insisted on withdrawal of the doctrine of caveat emptor from adjudication of cases involving white collar crime.

Sir Walter Reckless, an eminent criminologist of U.S.A suggests that white collar crime represents the offences of businessmen who are in the
position to determine the policies and activities of business\textsuperscript{3}.

Some authorities suggest that white collar crimes are committed by persons of status not for need but for greed.\textsuperscript{4}

Referring to this variety of the upper world of crime, Barnes and Teaters quoted Lord Acton who observed power tend to corrupt and absolute power tends to corrupt absolutely. Wherever citizens of a particular community become apathetic to the working of their government, corruption and alliance between public servants and criminal world are common phenomenon resulting in to breach of trust fraud and other malpractices.

It must be emphatically stated that white collar criminality thrives because of public apathy to it. The reason for this public insensibility is that firstly such criminals operate within the strict letter of the law and exploit the credibility of their victims and secondly the legal battles involved are dragged out years in the courts, with the result the gravity of the offence in completely lost in the oblivion. That apart, the impact of white collar crimes is so much diffused in the community that the individual victims are only marginally affected by it, and therefore they conveniently forget all about it.

There is yet another point to context of white collar crime. At times, the member of community themselves contribute to the commission of various white collar crimes willingly or unwillingly. For instance illegal gratification to public servant to get the work done quickly, black marketing in time of scarcity, evasive price violation, rent ceiling violation etc.... are some of the common examples where victims of the crime are themselves to be blamed for involvement in white collar criminality. In fact such crimes can not be committed unless there is demand for illegal favour from consumers and they are actively involved in the deal.

\textsuperscript{3} Walter Reckless : The crime problem, p .345

\textsuperscript{4} Goswami P : Criminology (1964 Ed).p 249
2.3.1.4 Contributing Factors  

Of all the factors, the economic and industrial growth throughout the world has perhaps been the most potential cause of increase in white collar crimes in recent years. The changing socio-economic scenario of the society coupled with increase in wealth and prosperity has furnished opportunities for such crimes commenting on the growing incidence of white collar crime in India, the law commission in its Twenty Ninth Report\(^5\) Observed that modern scientific and technological developments and monopolistic trends in business world have led to enormous increase in white collar crimes.

The post-independence period in India ushered an era of welfare activities which necessitated regulatory measure\(^6\) On the part of government to control means of production and distribution so as to subserve the common good\(^7\). The contravention of such regulatory measures generally gives rise to white collar criminality or Corporate Criminality.

Marshal B. Clinard asserted that the problem of white collar criminality or Corporate criminality has its roots in Competitive business community which tries to oust their rival competitors in order to earn huge profits. Sometimes such crimes may also be committed merely for the sake of retaining existence in the competitive business. To illustrate, though there is a prescribed code of ethical for the practicing lawyer but since the very nature of their profession involves the spirit of combat and competition, they often resort unlawful tactics such as concealment or misrepresentation of facts, which if detected is punishable under the law. Another example, the private educational institutions in India which

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\(^5\) Law commission of India, 29\(^{th}\) Report 1966p.3  
\(^7\) Art.39(b) and (c) of the constitution of India.
receive public aid grants furnish false accounts simply for the sake of retaining their existence. Likewise, the members of industrial and business class who enjoy high status in the society have a tendency to suppress their real profits by furnishing false fabricated accounts of their income and property in order to claim tax exemptions or avoid payment of heavy taxes.

One more reason for the multiplicity of white collar crime is relatively high socio-economic status of white collar criminals. They belong to an influential group which is powerful enough to handle their occupation fact fully and persons affected there by hardly Know that they are being victimized. Moreover, the public in general is also somewhat apathetic to such crimes thus causing obstruction in prosecution and punishment of white collar criminals. It is often alleged that criminal law administrators and Judges being members of upper strata of the society, are generally sympathetic towards white collar criminals while dealing with them. But there seems no justification in this assertion. If this allegation is based on the large numbers of acquittals of white collar criminals it may be pointed out that it is not because of the sympathy of judges for those criminals but because of the thin line of demarcation between criminality and immorality involved in white collar crimes.

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

2.3.1.5 White collar crime in India

White collar criminality has become a global phenomenon with the advance of commerce and technology. Like any other country, India is equally in the grip of white collar criminality. The reason for the enormous increase in white collar crime in recent decades is to be found in the fast developing economy and industrial growth of this developing country. The Santhanam Committee Report in its finding gave a vivid picture of white collar crimes committed by persons of respectability such as businessmen industrialists, contractors and suppliers as also the corrupt public officials\(^8\) Highlighting the magnitude of white collar crime in India. The commission on prevention of Corruption in its report observed:

“The advance of technological and scientific development is contributing to the emergence of mass society with a large rank of file and a small controlling elite, encouraging the growth of monopolies, the rise of a managerial class and intricate institutional mechanisms. Strict adherence to high standard of ethical behavior is necessary for the even and honest functioning of the new social, political and economic processes. The inability of all sections of society to appreciate this need in full result in the emergence growth of white collar and economic crime, render enforcement of the laws, themselves not sufficiently deterrent, more difficult. Tax evasion and avoidance, share pushing, malpractices in the share market and administration of the companies, monopolistic control, usury, Under invoicing or over invoicing, hoarding, profiteering, substandard performance of contracts of constructions and supply, evasion of economic laws, bribery and corruption, election offences and malpractices are some examples of white collar crime”\(^9\)

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\(^8\)Santhanam Committee Report, pp.251-53.

\(^9\)Government India Report of the commission on prevention of corruption (1964) para2.13,p 11
The Commission broadly classified white collar and socio-economic crimes in to eight categories and suggested insertion of a new chapter on white collar crimes in the Indian penal code. The matter was referred by the Government to the Law Commission of India for consideration, The Law Commission, however disagreed with proposal and observed that

“Such offence are better left to dealt with by special and self contained enactments which supplement the basic criminal law”.

The Report of the Vivin Bose Commission of Inquiry in to the affairs of Dalmia Jain group of companies in 1963 highlights how these big industries indulge in white collar crimes such as fraud.

The CBI probe against win chanddha and Hindujas in the famous Bofors scandal and FERA enquiries against Delhi firm Jyotsna Holding Pvt.Ltd. involving 6.5 core illegal commission for contract of pipes with ONGC in 1988 are glaring illustration on the point. The ever biggest Multi thousand crore security scam by Harshad Mehta during 1991-92 involving persons holding high position in certain banks including certain prestigious and leading bank, the State Bank of India further evince the massive corruption, fraud and mismanagement in Indian Banks and the nevus between the brokers and brokers of Underworld gangs. The stock market shares scam in March 2001, master minded by Ketan Parekh. India’s biggest share broker is yet another illustration of manipulations in stock market., Falsification of accounts tempering with records for personal gain and tax

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evasion\textsuperscript{11} etc….Similar observation were made by Mr. Justice M.C.Chagla about the big business magnate Mundhra who wanted to “build up industrial empire of dubious means “ There were as many as 124 prosecution against this business tycoon and companies owned or controlled by him between 1958 to 1960 and as many as 113 of them resulted in to conviction.\textsuperscript{12}

2.3.1.6 Types of white collar crimes

White collar crime in India is Flourishing everyday in new form. Some of the white collar crimes Common in India are.

2.3.1.6 (I) Tax evasion

The complicity of tax laws in India has provided sufficient scope for the tax payers to evade taxes. The evasion is more common with influential categories of persons such as traders, business man lawyers, doctors, engineers, contractor etc. The main difficulty posed before the income tax Department is to know the rest of the money goes in to circulation as black money Despite frequent modification in tax laws of the country the menace of tax evasion continues unabated and it is causing considerable loss to government revenue.

The supreme court in it majority decision in R.K Garg V Union of India (1981) 133 ITR 239 upholding the validity of the special Bearer Bonds (Immunity and Exemption) Act,1981. Observed that the Act was not intended to encourage tax evasion in farther and condone such evasion committed in past but the real object of the Act was to launch a nation-wide search to unearth undisclosed wealth by encouraging small incentive to the who declared their undisclosed cash. The main intention was to unearth “black money” so as to prevent further loss revenues.

\textsuperscript{11} Tax of several crores of rupees is evaded annually by assesses in higher income groups which results into circulation of black money. Wanchoo Committee appointed by Government of India in 1970 made certain important recommendations to unearth black money. The government of India introduced VDIS (Voluntary Disclosure of Income) Scheme, 1997 to unearth black money.

\textsuperscript{12} Fouth Annual Reprt on the working of Indian Companies Act,1956 Government of India (1960)
It may be pointed out that the problem of generation of black money means unaccounted money and its proliferation is not new. The Government of India has Formulated voluntary disclosure schemes to unearth the black money specially to be used for certain social objectives. But the result of these scheme have not been very encouraging. The main reason for unsatisfactory response to these scheme seems to be that tax payer do not want to be identified as having evaded the tax in the past and the fear of re-opening of their past assessments and facing roving inquiries also dissuade them from resorting to these schemes. It is significant to note in this context that what constitute crime is “tax evasion” and not the “tax avoidance”. Though both these terms appear to be synonymous, there is fine distinction between the two. While the former implies non payment of tax due to be paid, the latter signifies arranging the spared over of one’s income in such a way that it does not incur tax liability legally and lawfully.

It may be stated that the Government has introduced various regulatory legislations such as the Essential Commodities Act, 1955, the Industrial (Development and Regulation) Act, 1951, The Import and Export (Control) Act, 1947, the foreign Exchange (Regulation) Act, 1947, Companies Act 1956 as amended from time to time, the breach of which result in white collar criminality.

A large majority of white collar crimes are however operating within the letter and spirit of the law and therefore, do not call for legal action.

2.3.1.6(II) Food and drug adulteration

Adulteration in food and drugs causes irreparable damages to the health of innocent people. This evil practice is rapidly increasing in India. Accordingly to survey report of Ministry of health, Government of India about 25% to 70% of the food stuffs consumed in this country are adult erected or contaminated. This

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13 The VDIS 1997 which ended on 31st Dec.1997,launched by Government of India has also not yielded the desired result.

14 Provident Investment Company V Income Tax commissioner, AIR 1954 Com.95
tendency is due to the greed of the manufacturers the existing laws are defective and inadequate to prevent food and drug adulteration. The precaution under prevention of food adulteration Act have failed due to
· The defective reports of the public analysis’s.
· Delay in the examination of collected samples.
· Non-implementation of proper procedure for collection of samples

2.3.1.6(III) Hoarding, Black Marketing and Adulteration:

The white collar crimes which are common to Indian trade and business world are hoarding, profiteering and black marketing. Violation of foreign exchange regulations\textsuperscript{15} and import and export laws are frequently resorted to for the sake of huge profits. That apart, adulteration of foodstuffs, edibles and drugs which causes irreparable danger to public health is yet another white collar crime common in India.\textsuperscript{16} The Consumer Protection Act, 1986; the Narcotic Drugs and Psychotropic Substances Act 1985(NDPS) Monopolies and Trade Restrictive Practices (Amendment) Act, 1992 The law Commission of India has suggested drastic measures against such offenders. In the Commission’s observation the tedious prosecution process involved in the trial of such cases frustrates the cause of justice and often results into unjustified acquittal due to defective report of the analyst or delay in examination of samples or lack of legal expertise etc.\textsuperscript{17}

Hoarding and black marketing of essential good and commodities is one of the main forms of white collar crime. It is frequently done by the traders and business communities in India. According to Sutherland the main cause is ‘the

\textsuperscript{15}The Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 as amended in 1993 (Act No. 52 of 1993) w.e.f. 25-6-1993, See also The Smugglers & Foreign Exchang Manipulators, (Forfeiture of Property) Act, 1976

\textsuperscript{16}The Consumer Protection Act, 1986; the Narcotic Drugs and Psychotropic Substances Act 1985(NDPS) Monopolies and Trade Restrictive Practices (Amendment) Act, 1992 are enacted to prevent these offences which affect the public health.

\textsuperscript{17}Law Commission of India, 47th Report, p. 83.
rapid pace of social change and in technical complications of business affairs to unethical business practices. Whenever there is a slight shortage even in temporary form for goods, almost every trader conceals his stock and blindly teals the customers about non-availability of commodity in stock. Such black marketers and hoarders are wicked, anti-social and criminal.

2.3.1.7 White Collar Crime in certain Professions

Some of the professions involving technical expertise and skill provide sufficient opportunities for white collar criminality. They include medical profession, engineering, legal practise, private educational institutions etc.

2.3.1.7(I) Medical Profession

White collar crimes which are commonly committed by persons belonging to medical profession include issuance of false medical certificates, helping illegal abortions, secret service to dacoits by giving expert opinion leading to their acquittal and selling sample-drugs and medicines to patients or chemists. Dilatory tactics adopted by the members of this profession in treatment of their patients with a view to extracting huge sums from them has become an accepted norm, particularly with those medical men who do not have a good practice or have only a marginal earning.

The persons employed in essential services of the government or other undertakings are often confronted with the problem of getting leave due to shortage of staff. They, therefore, procure medical certificate regarding their false sickness and produce it to the department to justify their absence from duty. In return, they have to pay certain amount to the concerned medical staff. Thus, though a white collar crime, this tactics has proved a boon and a workable alternative to employees who have difficulty in obtaining leave from the employers.

Fake and misleading advertising is yet another area in which the white collar criminals operate. They make illegal and misleading claims of medical cure
through advertisements in newspapers, magazines, radio and television thus adding to human misery. Many patent medicines are not only worthless but harmful. Similar advertisements for cosmetics and adulterated food are also widespread in practice which are injurious to public health. These persons may not break the letter of the law but, by violating its spirit, they commit crimes which are not only anti-social, but also injurious to public health.

Some of the notorious instances are like that of Nithari case, where the medical professionals put up before the society the optimum level of brutal character they can reach for the crave of making money. Misleading and fake advertisement claiming absolute cure is also one of the frequent malpractices being carried out in the medical profession. The problem lies in the fact that, they often escape punishment, since they cannot be said to have violated the letter of law, but, by violating the spirit of law, they commit crimes which are truly anti-social and creates enormous damage to the public health and safety at large.

2.3.1.7(II) Engineering

The engineers’ role in having their role to play in white collar crimes, we often find instances of underhand dealing with contractors, suppliers, passing of sub-standard works and maintenance of bogus reports of the labour works. They financially earn more for their low grade works from the contractors, than they can earn for the genuine work. Therefore, many of them, out of the greed of earning more and more, play dangerously with thousands of lives of the individuals.

Scandals of this kind are reported in newspapers and magazines almost every day. Construction of buildings, roads, canals, dams and bridges with subslandered material not only endangers public safety but also results into huge loss to public exchequer.
2.3.1.7 (III) White Collar Crime in Legal Profession

The white collar crimes became a phenomenon to be reckoned with industrial revolution. Modern industrial capitalist economy which evolved with time became complex in nature as it developed a growing commercial nexus among insurance, banking, stocks and related corporate matters. This in turn, gave rise to critical legal intricacies relating to property rights and other legal matters which paved the way for the birth of a new class of professionals of advocates who in the name of providing justice started abetting in the wrong and thereby pursued their own narrow interest. A large number of advocates evolved, who forget the pious oath of serving the society and started looking for the legal loopholes and concentrated mainly in helping out the rich entrepreneurs to grow richer. They made extensive study to try out ways for maximum tax evasion for these rich corporate personalities as well as for themselves. The white collar crimes committed by these legal practitioners only confines in sorting out illegal methods of tax-evasion. There are very frequent instances of unscrupulous and unethical practices like that of fabricating false evidence, engaging professional witnesses, thereby violating ethical standards of legal profession and dilatory tactics in collusion with the ministerial staff of the courts. It is the most unfortunate situation at the same time devastating, because here the crimes are committed by those individuals who are being given by the State the responsibility to ensure justice.

In India the lawyer’s profession is not looked with much respect these days. There are two obvious reasons for this. The deteriorating standards of legal education, and the unethical practices resorted to by the members of legal profession to procure clientage are mainly responsible for the degradation of this profession which was once considered to be one of the noblest vocations.

Generally, the professional crooks and criminal gangs have their own trusted lawyer who can be depended upon to arrange things and keep himself ready with bail bond or habeas corpus writ to avoid arrest of the gangster. If the
members of the gang are arrested, the lawyer has to find out ways and means to arrange or ‘fix’ their release. There are criminal lawyers who arrange professional alibies, cooked witnesses in close liaison with the police for defending the gangsters.

Though there is a definite code of conduct for legal profession but it is not effective. However, this is not to say that all lawyers are corrupt and unethical. Quite a large number of them are most sincere and honest in their profession commanding great respect from all sections of society. Perhaps, it is because of the peculiar nature of their profession that the lawyers and advocates have to resort to these tactics in order to survive in the profession which is becoming more and more competitive with the passage of time.

2.3.1.7(IV) Educational Institutions

Yet another field where white collar criminals operate with impunity are the privately run educational institutions in this country. The governing bodies of these institutions manage to secure large sums by way of government grants or financial aid by submitting fictitious and fake details about their institutions. The teachers and other staff working in these institutions receive a not enough salary far less than what they actually sign for, thus allowing a big margin for the management to grab huge amount in this illegal manner. The victimized teachers can hardly afford to complain about this exploitation to high ups because of the fear of being thrown out of job. They are, therefore, compelled to compromise with the situation. Although the Government has introduced the scheme of treasury-payments for teachers of private institutions, but the problem still persists in one form or the other. That apart, fake and bogus enrolments of students who are residing far away from the place of location of these institutions is yet another source of illegal earning for them. They charge huge amounts by way of donations or capitation fees from such needy students. Even rackets operate in these institutions for procuring students to appear in different examinations on the basis of
manipulated eligibility certificates or domicile certificates in return for huge sums. These dishonest and unscrupulous practices have damaged the standard of education in India to such an extent that it is causing an irreparable loss to the younger generation.¹⁸

A nastier role is played by the private institutions that are least bothered in providing the education, but only concentrate of making business at the cost of the children's future. Even rackets operate in these institutions for procuring students to appear in the examinations on the basis of manipulated eligibility certificates, thereby damaging the standard of education in India. When it comes to the Governmental institutions, the teachers and staffs of the institutions are often found to be involved in unscrupulous practices, since they can hardly make fortune from the inadequate salary they receive from the government. Teachers often drag the students for taking private tuitions and even go to the extent of blackmailing them of ruining their future, if they deny doing so. More often, than not, these privately managed educational institutions as also those imparting some professional education, enjoy the patronage of some influential politicians and many of them are even owned by them. Many such institutions are virtually non-existent and are functioning as commercial shops, enabling the students to get degrees on payment of huge sums in blatant violation of the government rules, regulations and norms. The magnitude of this white collar criminality has adversely affected the standard of education in most States, and, therefore, the problem -needs to be tackled through stringent statutory measures.

¹⁸ This is not to say that all the privately run educational institutions are corrupts Indeed there are several private schools and colleges which have a reputation-of being the ideal institutions.
2.3.1.7(v) White collar crime in business deals

These are only a handful of instance of white collar crimes practiced in day to day life by certain professional in the course of their profession. The major role in committing white collar crime are played by the business men and politician. whose greed and want multiply with the more they acquire. In India whenever major scandal come to the media focus a through investigation always find an unlawful involvement of politician parities in it. so far as businessmen are conserved, their act of white collar crime are go beyond the court.

White collar crimes are also rampant in business world. There have always been instances of violation of trust. Sutherland made a careful study of a number of large corporations and business houses in United States and found that they were involved in illegal contracts, combinations or conspiracies in restraint of trade, misrepresentation in advertising, infringements against copyrights and trade marks, unfair labour practices, bribing public officials and so on. The public hardly knows the trickery of business criminals as they treat it as not too important for their purpose.

Sutherland attributed the highest degree of criminality to business world which includes traders, businessmen and industrialists. It has been held that “business communities in India of large and small merchants are basically dishonest bunch of crooks ..... nowhere in the world do businessmen get rich so quickly as they do in India19

The Report of the Monopolies Inquiry Commission expressed great concern about the chronic problem of hoarding, profiteering and black-marketing of essential commodities by traders in India. In times of shortage and scarcity of consumer commodities, the traders withdraw the stock and subsequently dispose it of at exorbitant prices.20

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The Santhanam Committee Report on Prevention of Corruption, observed that Indian businessmen build up secret hoards of foreign exchange abroad through under-invoicing of exports and over-invoicing of imports violating the Imports & Exports Laws and Foreign Exchange Regulations.\textsuperscript{21}

Although bribery is an offence under the Prevention of Corruption Act, 1988 and both, bribe-taker as well as the bribe-giver are equally punishable, but commercial agents and public officials indulge in illegal gratification for their personal gain and the legal restraints provided for the purpose are hardly adequate to cure this menace.\textsuperscript{22} It may, however, be pointed out that all bribery cases are not necessarily white collar crimes because white collar criminality is confined to only those illegal activities which the persons of prestigious group, high social status commit in course of their legitimate business or occupation for financial gain.

Adulteration of edible foodstuffs is also frequently committed by businessmen which is injurious to public health. The sale and production of spurious drugs and sub-standard medicines by manufacturers is yet another white collar crime which enables businessmen to earn huge illegal profits.\textsuperscript{23} The evil has become so widespread and persistent that it is difficult to get even air, water and light unpolluted. The constant rise in price and cost of living has made the consumers cost-conscious. The unscrupulous traders take undue advantage of the situation and provide adulterated articles of food, drinks or drugs etc. at a cheaper rate and earn huge profits.\textsuperscript{24} They even do not hesitate to add poisonous constituents to articles of food and drinks which are injurious to health. A number of deaths are reported every year due to consumption of spurious liquor or food poisoning\textsuperscript{25}.

\textsuperscript{21}Santhanam Committee Report, p. 253
\textsuperscript{23}Pharmaceutical Inquiry Committee Report, 1954, p. 146.
\textsuperscript{25}Ibid.
Some of the common adulterants used in various edibles and articles of foodstuffs are:—

(i) injurious colours such as sacrol, succarin etc. in preparation of ice-cream and kulfi;

(ii) addition of blotting paper or soapstone in panir-

(hi) geru, ratanjot and powdered husk of rice or bran in powdered chillies and spices;

(iv) coal-tar in batasha and other sweets;

(v) horse-dung, powdered bran etc. in dhania.

These are only a few examples of adulteration in food and drinks. Despite stringent provisions in IPC, Adulteration Act, Drugs Act and Opium Act, the menace of adulteration still subsists and laws have failed to eradicate this evil.

White collar crimes also operate in insurance business where both the insured as well as insurer earn considerable profit by making false and fabricated claims. Instances are not wanting when intentional house-burning, automobile destruction and even murders are planned by the persons of respectable community in order to make good fortunes from the manipulated insurance claims.

2.3.1.8 Computer related White Collar Crime:

The latest developments in information technology and electronic media especially during 1990’s have given rise to a new variety of computer related white collar crime which are commonly called cyber-crimes. The widespread growth of these crimes has become a matter of global concern and a challenge for the law enforcement agencies in the new millennium. Because of the peculiar nature of these crimes, they can be committed anonymously and far away from the victim without being physically present there. Further, cyber
criminals have a major advantage; they can use computer technology to inflict damage without the risk of being caught. The cyber crimes cover a wide range of illegal computer-related activities which include offences such as theft of communication services, industrial espionage\(^{26}\), dissemination of pornographic and sexy offensive material in cyber-space, electronic money laundering and tax evasion, electronic vandalism, terrorism and extortion, tele-marketing frauds, illegal interception of telecommunication, etc.\(^{27}\) Australian Institute of Criminology at the Centre of Criminology, University of In fact, there is a cyber-crime wave in the 21st century. Presently, viruses\(^{28}\) are the most common problems which are causing serious damage to computer systems. Most viruses just replicate themselves, but many also cause damage. There are now more than 5000 different strains of viruses across the globe. For instance, ‘Love Bug’ virus of May 2000 caused severe damage to working internet sites. So also the virus recently developed by Pakistan has defaced the Indian web-site.

Besides virus, there are some common cyber offences which are directed against computer systems, networks or data. Notable among them are:

- It is a way to circumvent the billing mechanism of telephones allowing anyone to call anywhere in the world literally without any cost.

### 2.3.1.8(II) Internet frauds

Cyber space now provides a wide variety of investment opportunities opening new areas for deceit or fraud. Electronic funds transfer systems have begun to proliferate, hence there is risk of transactions being

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\(^{26}\)Industrial espionage can even kill the entire business

\(^{27}\) ‘Nine Types of Cyber Crimes’— A paper presented by Adam Grayer, Director Australian Institute of Criminology at the Centre of Criminology, University of Hong Kong on February 19, 2000.

\(^{28}\) Virus is a program or code that replicate and infact another programe, sector or document by inserting itself or attaching itself to that medium. The effect of virus is that it destroys or alter the data files and another program. Except in rare cases the virus dose not damage the computer hardware.
intercepted or diverted. Now-a-days valid credit card numbers can be intercepted electronically as well as physically and the digital information stored on a card can be counterfeited. Section 74 of the Copyright Act makes the offence punishable with imprisonment upto two years or with fine which may extend to one lakh rupees.

2.3.1.8(III) Hackers

Hacker is one who enjoys exploiting the details of programmable systems and knows how to strelet their capacity, computer hackers may affect the commercial web-sites or e-mail systems thus paralyzing the entire business. Hacking with computer system is punishable with imprisonment upto three years and fine which may extend to two lakh rupees as per Section 66 of the Copyright Act.

2.3.1.8(IV) Stalking

In stalking, persistent messages are sent to unwilling recipients thus causing them annoyance, worry and mental torture. Sending of unsolicited e-mails or spamming is an infringement of right of privacy.

2.3.1.8(V) E-mail security invasion

It means to encrypt the e-mail and make it private and non-viewable to others. Section 72 provides punishment for this offence.

2.3.1.8(VI) Money Laundering

It is a kind of cyber crime in which money is illegally down loaded in transit. It is shows that the real problem for every organization that investigates cyber crime is the lack of uniformity in laws against States and countries. There is also general lack of protection in this area of crime. Most of the cases of illegal access or damages remain unreported due to victim’s fear of exposure or loss of public faith and confidence. In view of the expanding dimensions of cyber crimes, there is urgen need for a model
legislation\textsuperscript{29} to tackle the growing incidence of these crimes. It hardly needs to be stated that the criminal law must continue to evolve if it is to adequately address to new developments in technology. It is true that the World Intellectual Property Organisation (WIPO) finalised two treaties in 1996 which are commonly known as ‘Internet treaties’ for countering the challenges posed by internet but these treaties talk only about the right of communication and do not contain provision on the right of reproduction. Moreover, the treaties are neutral on the subject of liability of Internet Service Producers (ISP’s)\textsuperscript{30} and the issue was left to be decided by the member nations through their legislative mechanism. In these circumstances, the treaties are of little use to resolve the liability of ISP’s which is a controversial legal issue emerging from cyber space which is the result of the very nature of digital networks.

2.3.1.9 In India Crime and Fraud in White Collar

2010-2011 Annual Global Fraud Survey report of Kroll conducted by Economist Intelligence Unit gives expected results. Fraud continues to be a big problem worldwide and more so in India. Of the companies surveyed, globally 75% reported experiencing fraud during the year. Though the figure has reduced in comparison to previous year’s 88%, the situation is still dismal. In India, the situation is disastrous, with 84% organizations reporting that they suffered from fraud during the year. It is wake-up call for India, as it is ranked second worldwide after Africa and shares the position with China. The chart below compares the top six fraud categories at global level with India. In most of the cases, India is doing much worse than its global counterparts are. Worldwide management conflict of interest, internal financial fraud, corruption and bribery and vendor procurement related frauds have increased. Physical theft of assets and information theft decreased. Indian business crucial pain points are corruption and bribery,

\textsuperscript{29} The Cyber Crimes Law of Nations, January 17, 2001

\textsuperscript{30} In India ISP’s are called Network Service Producers.
information theft, internal financial fraud, financial mismanagement and vendor procurement.

2.3.1.9(I) Cost of Fraud

The report answers the most relevant question relating to fraud – what is the loss caused by fraud? The estimated figure given in the report is that globally organizations suffered 2.1% revenue loss due to fraud. For India, the percentage is higher at 2.4%. Further analysis available in the report says that 18% of the companies reported an earnings loss of more than 4%. A quarter of these most affected companies suffered losses more than 10%. These companies are reporting corruption, bribery, money laundering and regulatory breaches frequently. However, they are doing nothing about it. The lack of fraud prevention and investigation measures is causing huge losses in these companies. Indian companies are ill prepared to the fight fraud menace. Just 50% companies have background screening, third-party due diligence and other fraud prevention measures in place. In my view, India does not have adequately trained fraud investigators as part of the risk management teams. Overall, the focus is on financial statements audits and internal audits. These audits are not done to detect frauds.

2.3.1.9(II) The Job Inside

Management finds it hard to accept this fact that internal employees and related parties conduct most frauds. The report mentions that insiders conducted 60% of the frauds globally. That is, 28% junior employees, 21% senior employees and 11% third-party agents conducted frauds. In India, 59% of the frauds were conducted by internal sources. The frauds conducted by senior employees cause more damage to the company. Not only are the financial figures larger, the reputation damage is huge. However, the companies in India still do not have adequate focus on internal controls and management controls. However, government has initiated some steps to address the high level of frauds in Indian private sector. In my view, the Indian government’s decision to give more power
to the Serious Fraud Investigation Office (SFIO) in the new Companies Bill is a step in the right direction. SFIO will be in a position to conduct more investigations, arrests, raids and seizures. This would put some brakes on the escalating financial fraud cases in India.

2.3.1.9(III) Corruption And Bribery in India

The report has a special coverage on corruption in India. It shows that the 2010-2011 corruption and fraud cases in India – 2G telecom scam, Adarsh Society scam, Commonwealth Game fraud, various land scams etc.. have negatively impacted India’s reputation internationally. Last decade depicted India’s growth story. The government and private sector post independence never had it so good. Huge investments were planned to improve infrastructure. With liberalization foreign investment flows increased. The sudden spurt in economy also resulted in higher greed and corruption soared. The cases show how senior level politicians and business heads who were much revered and respected compromised their ethics. As per the report, 78% of the Indian organizations have stated that they are highly/moderately vulnerable to corruption. In my view, this is an understatement; around 90- 95% of the companies are exposed to corruption. The multinational subsidiaries in India are also significantly affected by corruption. Though the FCPA and/or UKBA are applicable to them, the acts do not have much teeth in Indian scenario. In my view, the US/ UK authorities will be able to follow through only on the bigger cases, and the smaller ones will be ignored. Hence, the effectiveness of these acts is limited. Secondly, the developed countries have a one sided view of corruption. They prohibit their own country’s companies from paying bribes. However, accept the bribe money deposits from Indian (and other countries) politicians and businesspersons in their country’s banks. This encourages money laundering rather than curtailing corruption. Although, India has a Prevention Against Corruption Act, it hasn’t reduced corruption. As per the act, government officials cannot receive any form of bribes or grease payments. However, receiving 2-10% bribe of total contract value assigned is quite prevalent.
2.3.1.10 Four Shocking Misconceptions about White Collared Crime

The recent issue of Psychology Today has a short column on four major myths that are widely when it comes to white-collared crime—usually described as an illegal act committed for financial gain.

1. White-collared crimes are nonviolent—since white-collared crime is usually characterized as non-violent, many are prone to this myth. But criminals in general have a sense of entitlement and need for control.

2. White-collar criminals are highly paid—you may be thinking of famous Ponzi schemers like Bernie Madoff or Allen Sanford here, but white-collared criminals also depend on poorly paid underlings.

3. White-collar criminals are otherwise upstanding citizens—about 40% of whitecollared criminals have a record. So, no.

4. It’s all about cash—Yes, there are poorly paid white-collar criminals, but the mastermind of the crime could be very rich. Researchers say “peer pressure, company culture, and pure hubris” cause people to commit white-collared crimes.

2.3.1.11 White collar crime distinguished from traditional crime

It must be noted that white collar criminality has a close affinity to the attitudes and values of culture in a particular society. This is evident from the fact that white collar criminals are intelligent, stable, successful and men of high social status as compared with the ordinary criminals. They are foresighted persons belonging to the prestigious group of society. White collar crimes which are committed in commercial world are indirect, anonymous, impersonal and difficult to detect. As against this, ordinary criminals commit crimes which are direct and involve physical action such as beating, removal of property or use of force, etc. which can be easily indentified and detected. It is often said that ordinary crimes which are
otherwise called ‘blue collar crimes’ are more common with the underprivileged class while the white collar crimes are committed by the members of privileged group who belong to upper strata of society. Edwin Sutherland, however, suggests that status alone is not determinant of white collar or blue collar crime. This is evident from the fact that even the most privileged and prestige persons may commit heinous crime such as assault, murder, rape or kidnapping for which they can be severely punished, while, on the other hand, most under-privileged persons may be involved in a white collar crime like tax evasion, corruption or misrepresentation which may not be looked as serious offence. This however, does not mean that white collar crimes are petty offences because they do not carry major punishment. Undoubtedly, the penologist hitherto confined their attention to prevention of ordinary predatory crimes but the recent penal programmes sufficiently indicate that emphasis has now shifted to suppression of white collar criminality with equal vigour and strength. The amendments introduced in the Indian Companies Act in 2000, Monopolies And Restrictive Trade Practices Act, in 1992, Insurance and Banking laws, the appointment of Lokpal, Lokayukta and tightening of governmental control over private business groups sufficiently reflect upon the Government’s determination to suppress white collar criminality in India.

There is much resemblance between white collar and the blue-collar crime. Both owe their origin to common law and are adaptations of principles of theft, fraud etc. to modern socio-economic institutions and in fact there is no basic difference between the two. The only peculiarity of white collar crime is that it is committed by the persons of relatively high status of society. The criminal content in both the types is more or less common. It must, however, be noted that mens rea or guilty mind is an essential ingredient of every blue collar crime but many statutes dealing with white

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31 (Aug.) Cr. L.J. p. 45.
collar crime do not require *mens rea* in strict sense of the term. The doctrine of constructive *mens rea*\(^{32}\) applies in such cases.

It must be stated that besides being a social problem, white collar crime is also a legal problem. As *E. H. Sutherland*\(^{33}\) rightly puts it, no distinction in terms of social status, occupational activity, attitude or gravity of consequences material gain with little or no loss of status. This again, gives a misleading impression that the executive and judicial authorities who are concerned with the prevation of crime react favorably to the upper and middle class society and dispose of white collar criminals with mere censure or admonition while other criminals are subjected to severe penal sanctions under the law without being given any pre-warning. But that the reason for this soft attitude of law-makers and prosecutors towards white collar criminals is perhaps the latter’s closer contacts with agencies of social control on account of their social status and privileged position. More often than not, these criminals are friendly with the top ranking public officials. That apart, the impact of white collar crime is so widely diffused in a large number of people that it does not aggravate the feelings of one single individual.\(^{34}\) Therefore, the public cry against white collar criminality is far less than for the predatory crimes.

Commenting on the preponderance of white collar crime in the modern time *Edwin Sutherland* rightly comments that, “social disorganization on account of individualistic policies and competitive economy are the root causes for this type of criminality”. It is rather a reflection on society’s

\(^{32}\) Relevant cases are *C.S. Bansal v. Delhi Administration* (1963) 2 Cr LJ 439 (SC) as distinguished from *Dr. Vimla v. Delhi Administration*, AIR 1962 SC 1572; and the Madras High Court decision in *Walcott’s Case* i.e. *Daniel Hailey Walcott v. State*, (1968) 1 MLJ 229 involving offences of cheating and forgery.


\(^{34}\) R. Deb : Principles of Criminology, Criminal Law and Investigation, Vol I (2nd Ed.) p. 11.
attitude towards different types of crimes and the accepted values of its

culture.

The financial cost of white collar crime is probably several times
greater than that of all the crimes taken together. In a recent study it has been
concluded that the financial loss to society from white collar crime is far
greater than the financial loss from the predatory crimes committed by
persons of lower socio-economic status. It has been further concluded that
the average loss per burglary is less than ten thousand rupees and a burglary
which yields as much as one lakh of rupees is exceedingly rare. On the other
hand, there may be several crores rupees embezzlements reported in one
year. Notably, these embezzlements are nothing as compared with the large
scale crimes committed by corporations, investment trusts and public utility
concerns. It can, therefore, be inferred that white collar criminals violate
trust and create distrust which lowers social morale and results into social
disorganization to a large extent while other crimes produce relatively little
effect on social institutions.

By way of generalisation it may be stated that like other criminal
behavior, white collar criminality can best be explained through the process
of differential association. It is a generic explanation for both white collar
as also the blue collar criminality. Those who become white collar criminals
generally start their career in good neighborhoods and good homes, well
educated with some idealism and get into peculiar business situations in
which criminality is, practically a routine way of life. Another explanation for
white collar criminality is to be found in the process of social disorganization
in the community.35

35 David Dressier : Readings in Criminology and Penology, (Second Reprint 1966), p.91
2.3.2 Organised Crime

Criminal can set up corporation either for the purpose of crime or as vehical for laundering the proceed of crime. Organized crime has become a branch of big business simply the illegal sector of capital. It has been estimated that by the middle of 1990s the cross Criminal product of Organized crime made it the tweetieth richest organization in the world richer then 150 sovereign State.

2.3.2.1 Towards a Concept

The core organised crime activity is the supply of illegal goods and services to countless numbers of citizen customers. It is also deeply involved in legitimate business and in labour unions. It employs illegitimate methods-monopolisation, terrorism, extortion and tax-evasion to drive out or control lawful ownership and leadership, and to extract illegal profits from the public. Organised crime also corrupts public officials to avert governmental interference\textsuperscript{36} and is becoming increasingly sophisticated. In India, in addition to its traditional spheres of activities which included extortion, seeking protection money, contract killing, boot-logging, gambling, prostitution and smuggling, now added is drug trafficking, illicit arms trading, money laundering, transporting illegitimate activities based essentially on its readiness to use brute force and violence. By corrupting public officials and thereby monopolising or near monopolising, organised crime aims to secure for itself power. Later, the money and power it begets are used to infiltrate legitimate business and several other related activities.\textsuperscript{37}

The destabilizing effect that organised crime has on the country’s economy, trade and commerce can hardly be over -emphasised. Organised crime continues to grow at a disconcerting speed as the existing laws and procedures are not powerful enough to help the law enforcement agencies to collect adequate evidence to bring criminal


charges and try other remedies against organised criminal syndicates as a whole and thereby incapacitate them from carrying out their nefarious activities. Since the real strength of organised crime lies in its money power with which it buys political power, it is imperative to destroy its money power base.

Organised crime is not confined to the boundaries of any one country and has become a transnational problem. This is evidenced in the fields of drug trafficking, money-laundering, terrorism, gun-running and illegal immigration rackets. Moreover, advances in science and technology enable members of organised criminal groups to operate with high mobility and sophistication, thereby aggravating the already grim situation.

Organised crime has been studied in depth in USA since the beginning of this century. The Kefauver Committee (1951) concluded that there was a nationwide net work of criminal syndicates in the USA, fundamentally based on ‘muscle’ and ‘murder’ indiscriminately used in running their criminal enterprises. The 1976 Task Force on Organised crime listed seven characteristic the following seven characteristics of organized crime:

(i) Organised crime is a conspiratorial crime.
(ii) Organised crime has profit as its primary goal.
(iii) Organised crime is not limited to illegal enterprises or unlawful services but includes sophisticated activities as well.
(iv) Organised crime is predatory, using intimidation, violence corruption and appeals to greed.
(v) Organised crime’s conspiratorial groups are well disciplined and incorrigible.
(vi) Organised crime is not synonymous with the Mafia but knows no ethnic bounds.
(vii) Organised crime excludes political terrorists, being politically conservative, not radical.

(50)
Interpol has sought to define organised crime as:

“Any enterprise or group of persons engaged in continuing illegal activity which has as its primary purpose the generation of profits irrespective of national boundaries”.

No definition of organised crime can be perfect and universally acceptable. The evolution and the forms of organised crime differ from one country to another, which may be the result of different social, economic, historical and legal factors. Hence, any attempt to define organised crime has to be in the light of each country’s experience in dealing with the problem. Let us not restrict organised crime to Mafia type bodies or secret societies with rigid rules and initiation rites.

2.3.2.2 Legal Position in India

Organised crime has always existed in India in some form or another. It has, however, assumed its virulent form in modern times due to several socio-economic and political factors and advances in science and technology. Even though rural India is not immune from it, it is essentially an urban phenomenon. In India, there is no comprehensive law to control organised crime in all its dimensions and manifestations. There is, however, substantive law regarding criminal conspiracy. There are also penal provisions in various statutes against specific violations of those statutes.

2.3.2.2(I) Criminal Conspiracy

Sec. 120-A of the Indian Penal Code defines criminal conspiracy as: “When two or more persons agree to do, or cause to be done—

(1) An illegal act, or

(2) An Act which is not illegal by illegal means. Such an agreement is designated as criminal conspiracy: provided that no agreement except an agreement to commit an offence shall amount to a criminal conspiracy
unless some act besides the agreement is done by one or more parties to such agreement in pursuance thereof.

Explanation: It is immaterial whether the illegal act is the ultimate object of such agreement, or is merely incidental to that object”.

Section 120-B of the India Penal Code provides for punishment for criminal conspiracy. The punishment for the conspirator is the same as for the principal offender. It may, however, be emphasized that the criminal conspiracy by itself is a substantive offence. The conspiracy need not fructify and the mere proof of the Existence of the criminal conspiracy is adequate to have the criminal punished for such criminal conspiracy.

2.3.2.2(II) Other Laws

There are several other central statutes which deal with specific facets of organised crime. Some of them are: the Customs Act, 1962; the Narcotic Drugs and Psychotropic Substances Act, 1884; the Immoral Traffic (Prevention ) Act, 1956; the Foreign Exchange Regulation Act, 1973 and the Public Gambling Act, 1867 etc. Besides, the State Government has also legislated on subjects like excise, prohibition and gambling etc.

2.3.2.2(III) Preventive Action

The National Security Act 1980, provides for preventive detention by the Central Government or the State Government or by the officers designated by these Government. The detention order is issued for one year with a view to preventing a person from acting in any manner prejudicial to the defence of India or to the friendly relations with foreign powers. The detention has to be approved by an Advisory Board headed by a serving High Court judge. The expression ‘security of India’ is open to liberal interpretation and this Act has been used, though sparingly, againstanti-national elements and hard core gangsters. Detention is an executive action and the case does not go to the court for trial.
The illicit trafficking in narcotic drugs and psychotropic substances poses a serious threat to the health and welfare of the people and the activities of persons engaged in such illicit traffic have a destabilising effect on the national economy. The Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act 1988, provides for detention of such persons. The Central Government or the State Government or designated officers of these Government, can pass an order for detaining a person with a view to preventing him from engaging in illicit traffic in narcotic drugs. The detention can be made for one year but in certain circumstances it is extendable to two years.

Thus, India has laws scattered in various statutes to deal with various facets of organised crime. The existing laws, however, drastically fall short of the requirements to curb the menace. The Government of India is conscious of this and has drafted the Organised Crime Control Act.

The draft Act defines ‘Organised Criminal Gang’ in a very comprehensive manner, incorporating most of the essential characteristics of organised crime.

2.3.2.3 Types of organized crime

2.3.2.3(I) Money Laundering

Money laundering means conversion of illegal and ill-gotten money into seemingly legal money so that it can be integrated into the legitimate economy. Proceeds of drug related crimes are an important source of money laundering world over. Besides, tax evasion and violation of exchange regulations play an important role in merging this ill-gotten money with tax evaded income so as to obscure its origin. This aim is generally achieved via the intricate steps of placement, layering and integration so that the money so integrated in the legitimate economy can be freely used by the offenders without any fear of detection. Money laundering poses a serious threat world over, not only to the only to the criminal justice systems of the countries but also to their sovereignty. The United National Convention against Illicit Traffic in Narcotics Drugs and
Psychotropic Substances Act, 1988, (known as the Vienna Convention) to which India is a party, calls for criminalisation of laundering of the proceeds of drug crimes and other connected activities, and the confiscation of proceeds derived from such offences. There is no knowing how much money is laundered in India but the problem is quite serious. The tainted money is being accumulated and integrated into the economy by organised racketeers, smugglers, economic offenders and anti-social elements and is adversely affecting the internal security of the country. In order to curb the meance of money laundering, the Central Government is in the process of enacting the Proceeds of Crime and Money Laundering (Prevention) Act, 1997. In the proposed Act, money laundering has been defined as:

(i) engaging directly or in-directly in a transaction which involves property that is the proceed of crime; or

(ii) receiving, possessing, concealing, transferring, converting, disposing of within the territories of India, removing from or bringing into the territory of India the property i.e proceeds of crime.

‘Crime’, as defined in the Act, covers, several Penal Code offences viz., waging war against the Government of India, murder, attempted murder, voluntarily causing hurt, kidnapping for ransom, extortion, robbery, dacoity, criminal breach of trust, cheating, forgery, counterfeiting currency etc; certain provisions of the Prevention of Corruption Act, 1988; NDPS Act, 1985; Foreign Exchange Regulation Act, 1973 and the Customs Act, 1962. Thus, ‘crime’ has been defined comprehensively in the Act. The money generated through ‘crime’ is liable to be confiscated by the State.

2.3.2.3(II) Hawala

Illegal currency transfers via non-banking channels are called Hawala. It is an underground banking system. Secret flows of money can take place in free currency areas as well as in areas where currency conversion restrictions are
practiced due to the shortage of foreign exchange. It operates in the following manner. Someone in the USA, for example, deposits $1000 with an under-ground banker for payment to be made in India. The US under-ground banker contacts their counter part in India immediately on the telephone or by wire service and sends a coded message for payment to the Indian recipient. The hawala operator in India would contact the recipient and fix a meeting place. The recipient, in the meanwhile, would have received instructions on the telephone about the code word s/he has to exchange with the hawala operator. Thus, the hawala operator in India and the recipient of the money would exchange code words and the hawala operators would hand over the money to the recipient. Of course, the hawala operator in USA would charge a fee for the service rendered. There is no physical transfer of money in hawala operations as in the regular banking channels. This channel is generally used by drug traffickers, smugglers and kidnappers. Basically, the system operates on an ethnic network. The network may include more than 3 or 4 countries. The principal operators engage agents and sub agents in various countries for collection and disbursement of money.

Hawala is widespread in India. Families who have members earning abroad are clients of the system. The dangerous aspect of the hawala system is the nexus between hawala and illicit arms smuggling, drug trafficking and terrorist crimes.

Investigations in hawala related crimes are conducted under the Foreign Exchange Regulation Act. Even through the word ‘hawala’ has not been defined in FERA, the essence of the Act is that any person who retains foreign exchange abroad or sends foreign exchange abroad, without the Reserve Bank’s permission is violating FERA provisions.
Other types of organised crimes are

2.3.2.3(III) Drug Abuse and Drug Trafficking
2.3.2.3(IV) Light Arms Proliferation & Trafficking
2.3.2.3(V) Contract Killings
2.3.2.3(VI) Kidnapping for Ransom
2.3.2.3(VII) Illegal Immigration
2.3.2.3(VIII) Prostitution

2.3.2.4 Problems in control efforts:

1) Inadequate Legal structure
2) Difficulties in obtaining proofs
3) Slow peace of trial and Low conviction Rate
4) Lack of resource and training.
5) Lack of co-ordination
6) Criminal, Political and Bureaucratic Nexus.

2.3.2.5 Combating Organised Crime

It is the universal experience that organised crime is spawned by social economic and political factors and advances in science and technology have lent it a transnational character. Organised crime, like ordinary crime, cannot be rooted out completely from any society. It can certainly be kept within reasonable bounds by a deft mix of legal and administrative measures, coupled with social and political commitment. International co-operation can sound its death bell. some measures for combating organised crime, keeping in view the Indian ground realities.
(A) Substantive Law

India does not have a special Act to control/suppress organised crime.

(B) Procedural Law

Certain amendments need to be made in the Code of Criminal Procedure. The maximum time for police custody remand in section 167(2) of Code of Criminal Procedure is 15 days from the date of arrest of an accused. It is our experience that this time is inadequate for investigating organised crime cases having inter-state and international ramifications. The police custody remand should be enhanced from 15 to 30 days in cases of grave crime. Further, the police are mandated to file the charge sheet in 90 days from the date of arrest of the accused, failing which s/he is liable to be released on bail. This period needs to be enhanced to 180 days.

(C) Witness Protection Programme

In cases of organised crime and terrorism, the witnesses are reluctant to depose in the open court for fear of reprisals at the hands of criminal syndicates/terrorists. The cases of threat or criminal intimidation of potential witnesses are too many to be recounted. Some witnesses have also been killed by the criminal gangs/terrorists. As the courts go by evidence on record for establishing the guilt of the accused, it is essential to protect the witnesses from the wrath of criminal gangs. Hence, legal and physical protection should be provided to crucial witnesses in sensitive cases so that they can depose fearlessly in the court.

(D) Confiscating Proceeds of Crime

The main object of organised crime is acquisition of money and through money, power. It is through money power that the gangs corrupt the criminal justice agencies and the political leadership.
2.3.2.6 Improving Co-ordination and Setting Up Specialised Units

2.3.2.6(I) Enhancing International Co-operation

We are living in an era of “globalization of crime”. Speedy means of communication enable the transnational criminals to flee from one country to another within hours after the commission of crime, and to organise crimes spanning continents via the telephone.

2.3.2.6(II) Political Commitment

Incidence of organised crime is proportional to the will of the people to tolerate it. If there is strong political commitment, it can be suppressed by legislative action, strengthening of criminal justice system and building up of strong public opinion against it. Organised crime thrives when political commitment is lacking. The Vohra Committee Report has exposed the linkages between unscrupulous politicians and the criminal syndicates. A segment of politicians, cutting across party lines, are dependent on organised crime figures for financing their elections as well as giving them muscle power for rigging elections or overawing their political opponents. One of the ways of breaking the nexus between the criminals and politicians would be to enact stringent laws regarding election funding, with a view to preventing the tainted money from whatever source, including from the crime syndicates, seeping into the political system. Once this happens, people are likely to be elected to the State and National Parliament that would have no obligation towards the organised crime figures and are likely to have higher political commitment to stamp out organised crime. Another method would be to amend the election laws to prevent, apart from convicts, those against whom charges have been framed by the court in at least in two grave crimes, from running for elective offices.

This would impel the political figures to keep themselves at a safe distance from the crime figures and thereby help in cleansing the political process. It needs to be reiterated that enforcement action, however efficient, is not by itself adequate to stamp out organised crime.
2.3.2.6(III) Public Awareness

The surest means of curbing organised crime is to involve people in its prevention and investigation and to build up public opinion against it through the print and electronic media, workshops, seminars, and by socially boycotting organised crime figures. It is not unusual to see leaders of criminal syndicates acquiring Robin Hood images and becoming legends in their life time. Quite a few have become Members of the State Assemblies and the National Parliament. Some have become Ministers in the State Governments and occupy other elected offices. They can be prevented from occupying high political offices by heightened public awareness.

2.3.2.7 Role of Mass Media

Mass media—both print and electronic media—can play an important role in exposing organised crime and help build public opinion against it. Indian mass media has been doing this job quite well and everyday we read lurid accounts of the activities of crime syndicates in the newspapers and magazines. Notable newspapers and magazines have also taken to investigative journalism in this field. In this process, some media persons have suffered at the hands of the criminals but undaunted by it, they are going ahead with the exposes. This is a very heartening trend and must be encouraged.

2.3.3 State corporate crime

In criminology, the concept of state-corporate crime refers to crimes that result from the relationship between the policies of the state and the policies and practices of commercial corporations. The term was coined by Kramer and Michalowski (1990), and redefined by Aulette and Michalowski (1993). These definitions were intended to include all “socially injurious acts” and not merely those that are defined by the local criminal jurisdiction as crime. This is not universally accepted as a valid definition so a less contentious version has been adopted here. As an academic classification, it is distinguished from:
· corporate crime, which studies deviance within the context of a corporation and by a corporation;

· political crime, which is crime directed at the state; and

· state crime or “state-organised crime”, which studies crimes committed by government organisations (Chambliss: 1989).

State-corporate crime means crimes that result from public-private partnership. It generally results from the inherently distorted relations of the state and the policies and practices of commercial corporations. The term was coined by Kramer and Michalowski in 1990. Later it was re-defined in 1993 by Aulette and Michalowski. State-corporate crimes are often interchangeable with white-collar crime, corporate crime, and state crime. But, because of state-corporate crimes explicit focus on the symbiotic relationship that exists in capitalist countries between the state and the corporations it can be differentiated from white-collar crime, corporate crime, and state crime.

The relationship between the state and corporations dependent on the state for their profitability can expose a more complete range of criminal activity than might be provided by independent analyses of corporate or state-organised crimes.

To be able to operate as a commercial business entity, the modern corporation requires a legal framework of regulation and oversight within which to exploit the relevant markets profitably. The infrastructure of law and commerce are provided by the government of each state in which the corporation desires to trade, and there is an inevitable linkage between the political and commercial interests. All states rely on businesses to provide an economic base consistent with each government’s political policies. Without policies that are supportive of economic activity, businesses will not be profitable and so will not be able to provide the economic support that the state desires. In some cases, this symbiosis may lead to the commission of crimes. The research studies situations
where, for various reasons, the oversight of corporate and/or state organisations by independent bodies has been manipulated or excluded, and either existing criminal activity is redefined as lawful, or criminal activity results but is not prosecuted.

...societies create crime because they construct the rules whose transgression constitutes crime. The state is a major player in this process.

i.e. the way in which crime is defined is dynamic and reflects each society’s immediate needs and changing attitudes towards the local varieties of conduct. The process depends on the values underpinning the society, the mechanisms for resolving political conflict, the control over the discourse, and the exercise of power. Snider (1999) notes that capitalist states are often reluctant to pass laws to regulate large corporations, because this might threaten profitability, and that these states often use considerable sums to attract regional or national inward investment from large corporations. They offer new investors:

- preferential tax concessions not available to the ordinary citizen or local business if foreign investment is sought;
- loans, guarantees and other financial support on preferential terms;
- directly targeted grants and other subsidies; and
- a purpose-built infrastructure to subsidise the set-up costs.

Once the state is committed to this offer, it can be difficult to enforce local laws against pollution, health and safety or monopolies. Green and Ward (2004) examine how the debt repayment schemes in developing countries place such a financial burden on states that they often collude with corporations offering prospects of capital growth. Such collusion frequently entails the softening of environmental and other regulations. The debt service obligation can also exacerbate political instability in countries where the legitimacy of state power is questioned. Such political volatility leads states to adopt clientelistic or patrimonialist patterns of governance, fostering organized crime, corruption, and
authoritarianism. In some third world countries, this political atmosphere has encouraged repression and the use of torture. Exceptionally, genocide has occurred. But Sharkansky (1995) is careful to maintain a strict definition of “crime” for these purposes. Many individuals and organisations may disapprove of what governments do or fail to do, but such acts and omissions are not necessarily criminal.