Chapter-2
WHITE COLLAR CRIMES AND THE INDIAN PENAL CODE, 1860

2.1 INTRODUCTION-

It is true that both crime and criminal are looked upon with hatred by all sections of the society, but it is also true that the study and research of the law of crime has always been one of the most attractive branches of jurisprudence since the early years of human civilization. In fact the law of crime has been as old as the civilization itself. Wherever people organised themselves into groups or associations, the need for some sort of rules to regulate the behaviour of the members of that group inter-se has been felt, and its infraction was inevitable. There was no criminal law in uncivilized society and everyman was liable to be attacked in his person or property at any time by any one. The attacked either succumbed or over powered his opponent. “A tooth for a tooth, an eye for an eye, a life for a life” was the forerunner of criminal justice at that time. As the time advanced, the injured person agreed to accept compensation, instead of killing each other adversary. Subsequently, a sliding scale came into existence for satisfying ordinary crimes. Crime has also increased with the advancement of the society. Now with the advancement of science and technology newer form of criminality has arisen, known as white collar crime. The notion of white collar crime was first introduced in the field of criminology by Prof Edwin H. Sutherland in 1939. He defined white collar crimes as crime as a crime committed by persons of respectability and high social status in the course of their occupation.\(^1\) The main categories of white collar crimes are bribery and corruption, food and drug adulteration, counterfeiting, forgery, tax evasion, cyber-crimes etc.

White collar crimes are not a new phenomenon in our country. The Indian Penal Code 1860\(^2\) is the earliest comprehensive and codified criminal law of India. It also deals with many white collar crimes and punishment is provided for bribery and corruption,\(^3\) counterfeiting of coins and government stamps,\(^4\) of offences relating to weights and measures,\(^5\) offences relating to adulteration of food stuffs and drugs.\(^6\)

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\(^2\) Act No. 45 of 1860.

\(^3\) *Section 168, 169, 171B, 171C, 171E, 171H of Indian Penal Code, 1860.*

\(^4\) *Ibid* section 230 – 263.


\(^6\) *Ibid* section 272 - 276.
misappropriation of public property and criminal breach of trust\(^7\), cheating\(^8\), forgery and offences relating to documents\(^9\) and counterfeiting of currency\(^10\). To understand the gravity of these white collar crimes under Indian Penal Code, 1860 it is desirable to discuss these sections in detail.

**2.2. CORRUPTION**

Prevalence of corruption is one of the problems which our country has been facing from time immemorial. The word corruption is very comprehensive in its meaning. It implies all the activities which are against the law and the society. Its scope is very wide and it includes all the spheres of social life. The corruption is not confined to any particular sphere. It has entered and exists in every aspect of our modern society. It is also not a one side act. For every corruption there must be one corruptor. According to Stroud’s Judicial Dictionary\(^11\) corruption means moral obliquity or moral perversity. According to Oxford Advanced Learner’s Dictionary\(^12\) corruption means dishonest or illegal behavior, especially of people in authority. According to Black’s Law Dictionary\(^13\) corruption means a vicious and fraudulent intention to evade the prohibitions of the law. The act of an official or fiduciary person who unlawfully and wrongfully uses his station or character to procure some benefit for himself or for another person, contrary to duty and the rights of others. Dr. P. Ramanatha Aiyar’s definition seems to be very wide. According to him corruption is something against law, something forbidden by law, it is an act or intent to gain advantage not consistent with official duty and the right of others. Corruption can be defined as departure from what is pure or correct from the original\(^14\). The recent scandals like 2G Spectrum Tele Communication scam, Commonwealth Games scam, Adarsh Housing Society Scam has rocked the nation. The Santhanam Committee\(^15\) report in its finding gave a vivid picture of white collar crimes committed by persons of respectability such as businessmen, industrialists, contractors, suppliers and corrupt public officials.

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\(^{7}\)Ibid section 403 – 409.  
\(^{8}\)Ibid section 415 – 420.  
\(^{9}\)Ibid section 463 – 489.  
\(^{10}\)Ibid section 489A – 489D.  
\(^{11}\)Strouds, F, *The Judicial Dictionary* 172 (1890)  
\(^{15}\)Government of India Report, *Santhanam Committee on Corruption* (1963)
Section 161 to 165-A of Indian Penal Code, 1860 stands omitted by the Prevention of Corruption Act 1988.\textsuperscript{16} Corruption by public servants under the Indian Penal Code, 1860 is discussed as under-

\textbf{2.2.1 PUBLIC SERVANT UNLAWFULLY ENGAGING IN TRADE-}

Faith is reposed in a public servant and if public servants are allowed to engage in trade they would not be able to devote their undivided attention to their official work. Moreover they may take unfair advantage over other traders of their official position for the advancement of their trade. So keeping this aspect in mind S.168 of the Code provides “whoever, being a public servant, and being legally bound as such public servant not to engage in trade, engages in trade, shall be punished with simple imprisonment for a term which may extend to one year, or with fine, or with both.”\textsuperscript{17}

Trade in its wider sense covers every kind of trade, business, profession, occupation, calling or industry. According to Oxford Dictionary\textsuperscript{18} trade means the act or process of buying, selling, or exchanging commodities, at either wholesale or retail, with in a country or between countries. The Supreme Court in \textit{State of Gujarat v. Mahesh Kumar Thakkar}\textsuperscript{19} has held that trade in its narrow sense means “exchange of goods for goods or for money with object of making profit” and in its widest sense means “any business with a view to earn profit.” The Court ruled that where a tracer in the office of Sub-Divisional Soil Conservation Office took earned leave and during that period of leave obtained training as an Electrical Signal Maintainer from the railway administration, it was held that he cannot be convicted under section 168 of the Indian Penal Code, 1860 as he has not engaged himself in any trade even though he was receiving stipend from the railways during the period of his training. Similarly in \textit{State of Maharastra v. Chandrakant Solanki},\textsuperscript{20} the Supreme Court has held that engagement as agent of insurance company on commission basis does not amount to engaging in trade within the meaning of section 168 of the Code. The ‘commission’ does not include profits because commission is an amount settled beforehand which goes to the person who brings business to the company, whereas profits are whatever

\textsuperscript{17} Section 168 of the Indian Penal Code, 1860.
\textsuperscript{20} 1995 Cri LJ 832(Mah).
the company finally earns after deducting all expenditure and it goes to the company. Thus, where the accused was working as Inspector on probation in National Insurance Company, engaged himself by running two insurance companies and received agent’s commission, it cannot be said that he engaged himself in trade. The Supreme Court of India in *Kanwarjit Singh Kakkar v. State of Punjab and Anr.*,\(^{21}\) has held that the demand or receipt of fee by a medical professional for extending medical help by itself cannot be held to be an illegal gratification as the amount so charged is towards professional remuneration. So the offence u/s.168, IPC cannot be said to have been made out as the treatment of patients by a doctor cannot by itself be held to be engagement in a trade. However, the said act may fall within the ambit of misconduct to be dealt with under the Service Rules. Similarly in *State of Gujarat v. Mahesh Kumar Dheerajlal Thakka*,\(^{22}\) the Supreme Court has held that ‘private practice’ cannot be termed as ‘trade’ as accepting of ‘fee’ does not involve profit making, which is an essential ingredient of the term ‘trade’.

So we may conclude that if public servants were allowed to engage in trade they would not be able to devote their undivided attention to their official work.

### 2.2.2 PUBLIC SERVANT UNLAWFULLY BUYING OR BIDDING FOR PROPERTY-

Under Section 169 of Indian Penal Code, 1860, public servant is prohibited from unlawfully buying or bidding for property. This section is an extension of section 168 of the Code. The scope of the section is limited to property sold by a public servant in his official capacity. This is based on the principle that, as he is placed in an advantageous position over the other, he might influence the sale in his favour. But if the sale is unconnected with the official position of the public servant, he is not prohibited from purchasing or bidding for the property, and the section is not attracted. For instance, purchase of an impounded pony by a police officer,\(^{23}\) and of a buffalo belonging to a District Board at an auction by a member of board were neither covered by this section.\(^{24}\) It would be profitable for us to reproduce the language of S.169 of the Code which runs as under-

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\(^{22}\) *AIR 1980 SC 1167*.


\(^{24}\) *Suraj Narian Chaube v State*, *AIR 1938 Bom. 565*. 

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“Whoever, being a public servant, and being legally bound as such public servant, not to purchase or bid for certain property, purchases or bids for that property, either in his own name or in the name of another, or jointly, or in shares with others, shall be punished with simple imprisonment for a term which may extend to two years, or with fine, or with both; and the property, if purchased, shall be confiscated.\textsuperscript{25}

The Supreme Court of India in \textit{R. Sai Bharathi v. J. Jayalalitha}\textsuperscript{26} has held that under section 169 of Indian Penal Code, 1860 public servant is prohibited from unlawfully buying or bidding for property but such prohibition must flow from enacted law or rules/regulation framed there under. No executive order could be considered such a law. Hence code of conduct framed by Governor laying guidelines for conduct of ministers have no statutory force and are not enforceable in court of law. As such Chief Minister is not legally prohibited from purchasing land belonging to government owned company. The charge under sections 169 of Indian Penal Code, 1860 is therefore liable to fail.

\textbf{2.3. BRIBERY-}

Bribery is an act of giving money or gift giving that alters the behavior of the recipient. Bribery constitutes a crime and is defined by Black’s Law Dictionary\textsuperscript{27} as the offering, giving, receiving, or soliciting of any item of value to influence the actions of an official or other person in charge of a public or legal duty. Bribery as used in Encyclopedia Americana\textsuperscript{28} is said to be voluntary receiving or giving anything of value in payment for an official act done or to be done and that it is not confined to judicial officers or other persons concerned in the administration of justice, but it extends to all officers concerned with the administration of the Government Executive, Legislative and Judicial and under the approximate circumstance military. The Supreme of Court of India has observed that bribe is not charity but shrewd business. Bribe is given not only to get things unlawfully done but also to get lawful things done promptly.\textsuperscript{29}

With the coalition governments coming into power during 1990’s instability of government have become a common phenomenon in India. As a result of this, the anti-defection law instead of being an inhibitor of floor crossing became an

\textsuperscript{25} Section 169 of the Indian Penal Code, 1860.
\textsuperscript{26} AIR 2004 SC 692.
\textsuperscript{27} Henry Campbell Black, \textit{Black’s Law Dictionary} 39 (1968).
\textsuperscript{28} Drake De Kay,\textit{Encyclopedia Americana} 205 (1968).
opportunity for elected members to make quick money. In *P.V. Narsimha Rao v. State*^{30} Sibu Soren & Suraj Mandal took money to save the Narsimha Rao Government from toppling. Political leader would tend to maintain their political parties financially sound and at the same time insure themselves and their families against uncertainties of future. This led to increasing nexus between politicians and organized criminal.

Section 171-B which deals with bribery runs as under-^{31}(1) Whoever—

(i) gives a gratification to any person with the object of inducing him or any other person to exercise any electoral right or of rewarding any person for having exercised any such right; or

(ii) accepts either for himself or for any other person any gratification as a reward for exercising any such right or for inducing or attempting to induce any other person to exercise any such right; commits the offence of bribery:

Provided that a declaration of public policy or a promise of public action shall not be an offence under this section.

(2) A person who offers, or agrees to give, or offers or attempts to procure, a gratification shall be deemed to give a gratification.

(3) A person who obtains or agrees to accept or attempts to obtain a gratification shall be deemed to accept a gratification, and a person who accepts a gratification as a motive for doing what he does not intend to do, or as a reward for doing what he has not done, shall be deemed to have accepted the gratification as a reward.

Section 171 B of Indian Penal Code, 1860 defines bribery as giving or acceptance of a gratification either as a motive or reward to any person, to induce him to stand or not to stand as a candidate or to withdrew from the contest or to vote or not to vote at an election. It also include offer or agreement to give or offer and attempt to procure a gratification, as explained in section 7 of the Prevention of Corruption Act, 1988, includes an offer of gratification. It is not restricted to pecuniary gratification or to gratification estimable in money.^{32}


^{31}Section 171B ins. by Act 39 of 1920, sec. 2.

The Supreme Court in *Pillai v. Dangali*\(^{33}\) has held that money paid to a club to pay off its debt and to repair its premises with the object of inducing those of its members who are voters to record their votes in favor of the candidate is a bribe. The motive of the briber and not the effect of the bribe is the test. Similarly in *Shanti Lal v. State*\(^{34}\) the accused, a candidate from election directs his agent to dissuade a rival candidate from standing for election, by offering him money and the later accordingly offers a large sum of money to the rival candidate provided he withdraws from candidature. It was held by the Supreme Court that the conduct of the accused comes with the definition of bribery contained in Section 171-B of the Indian Penal Code 1860. Again in *H.V Kamath v. Nihal Singh*\(^{35}\) it was held by the Apex Court that even a single act of bribery by or with the knowledge and consent of the candidate or by his agent, however insignificant to invalidate an election. But in *Deepak Ganpatrao Salunke v. State of Maharashtra*\(^{36}\), deviating from the above trend, where a statement was made by Deputy Chief Minister of Maharashtra in a public meeting that if Republican Party of India would support his alliance in the parliamentary election he will see that a member of RPI is made Deputy Chief Ministers of State. It was held that the above statement does not amount to bribery defined under Section 171-B of the Indian Penal Code, since such statement is not giving any offer to any individual. There is nothing in the statement inducing any individual to exercise any electoral right in a particular manner. Therefore seeking support of a political party during the course of election and making an offer to political party of some share in the political power for giving such support cannot be called as giving gratification as contemplated under Section 171-B of the Indian Penal Code, 1860.

It was further pointed out that unless there is such give and take policy amongst the political parties, the political alliance which is now necessary to form a coalition government is not possible. When one party on its own cannot get majority in the house, coalition government is the only alternation. Judged in the light of these circumstances, it was held that the statement does not amount to bribery. In *Govind*

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\(^{35}\) AIR 1970 SC 211, See also Abdul Hussian v. Shamsul Huda, AIR 1975 SC 1612,

\(^{36}\) 1999 Cri LJ 1224 (SC).
Singh v. Harchand Kaur\textsuperscript{37} election petition was filed alleging corrupt practice on the part of returned candidate for sanctioning pension to old aged and handicapped persons. It is held that since the charge of corrupt practices have to be proved beyond reasonable doubt and not merely by preponderance of probabilities, the evidence relied upon by the High Court cannot be held to be of such probative value. So the Supreme Court set aside the judgment of High Court in which the election of the appellant was declared void.

2.3.1 PUNISHMENT FOR BRIBERY-
Bribery is a very serious offence and has been made punishable under S.171E of the Code which runs as under-

\textquote{\textsuperscript{38}}[whoever commits the offence of bribery shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both. Provided that bribery by treating shall be punished with fine only. Explanation: “Treating” means that form of bribery where the gratification consists in food, drink, entertainment, or provision.]\textsuperscript{39}

The Supreme Court in Mohan Singh v. Bhanwarlal\textsuperscript{40} considered the meaning of the term gratification by referring to the explanation to Section 123(1)(b) of the Representation of People Act, 1951 and observed that gratification, even by the above explanation is not restricted to pecuniary gratification or gratification estimated in money and it includes all forms of entertainment and all forms of employment for reward barring bona-fide election expenses. Thus the term gratification may be taken to mean, something valuable which is calculated to satisfy a person’s aim, object or desire, whether or not that thing is estimable in terms of money.

The Supreme Court in Trilochan Singh v. Karnail Singh\textsuperscript{41} has evolved two tests to check out as to what would amount to an act of bribery. The first test is to see whether the gratification is calculated to satisfy a person’s aim, object or desire and secondly, whether the gratification would be of some value, even if the value is not estimable in terms of money. The gratification need not merely be of value to the person offered,

\textsuperscript{37} AIR 2011 SC 570.

\textsuperscript{38} Section 171E ins. by Act 39 of 1920, sec. 2.

\textsuperscript{39} Section 171E of the Indian Penal Code, 1860.

\textsuperscript{40} AIR 1964 SC 1366, See also Shiv Kirpal Singh v. V.V. Giri, AIR 1970 SC 2093, Lagadapati Raja Gopal v. Sunkara Krishna, AIR 2010 881 (AP).

but also to anybody else. The gratification need not be offered directly by the candidate himself. Even if an agent, on the instigation of the candidate, offers any such gratification, it will be sufficient to invoke the section.

Why bribery by treating is punishable with fine only? That should also be made punishable with imprisonment to deal with heavy hands with the menace of bribery. So the section should be amended.

2.3.2 ILLEGAL PAYMENT IN CONNECTION WITH AN ELECTION-

Money has always been a factor in politics and election. But the amount of money spent in pursuit of public office today has brought new dimensions to an old problem. Elections involve money and power, and unchecked power and money can lead to corruption. To tackle the problem of illegal payment at election section 171-H of the Code provides “Whoever without the general or special authority in writing of a candidate incurs or authorizes expenses on account of the holding of any public meeting, or upon any advertisement, circular or publication, or in any other way whatsoever for the purpose of promoting or procuring the election of such candidate, shall be punished with fine which may extend to five hundred rupees.\(^{42}\)

Provided that if any person having incurred any such expenses not exceeding the amount of ten rupees without authority obtains within ten days from the date on which such expenses were incurred the approval in writing of the candidate, he shall be deemed to have incurred such expenses with the authority of the candidate”\(^{43}\).

This section makes illegal payments in connection with an election not authorized by a candidate as an offence punishable with fine. It is interesting to note that the punishment not exceeding five hundred rupees seems to be totally inadequate in the present day. Similarly expenses incurred of not more than ten rupees as stated in the proviso clause does not make any sense now-a-days. So the section must be amended.

The Supreme Court in Common Cause v. Union of India and others,\(^ {44}\) has expressed its view relating to election expenditure, that expenditure incurred by a political party or by anybody or association or an individual (other than the candidate and his election agent) in furtherance of election prospects of a candidate will be excluded.

\(^{42}\) Section 171-H Ins. By Act 39 of 1920, Sec. 2.

\(^{43}\) Section 171-H of the Indian Penal Code, 1860.

from the expenditure incurred by a candidate if, and only if, that expenditure has been shown in the account of the party/body/association/individual concerned and that account has been duly audited and submitted to the Income Tax authorities. Otherwise, such expenditure shall be presumed to be that of the candidate.

2.4 COUNTERFEITING OF COINS AND GOVERNMENT STAMPS-

The Reserve Bank of India is the governing body that issue currency notes and coins in India. Counterfeiting of currency and government stamps is one of the organized white collar crimes which have assumed serious proportions globally. It not only causes serious setbacks to the world’s economy but also jeopardizes the genuine business transactions. Nowadays, the counterfeiting of currency notes is done with the help of modern equipment such as colour scanners, colour copiers and printers, as well as by offset process. Chapter XII of Indian Penal Code, 1860 from sections 230 to 263-A deals with offences relating to coins and government stamps. A person is said to “counterfeit” who causes one thing to resemble another thing, intending by means of that resemblance to practice deception, or knowing it to be likely that deception will thereby be practiced.45 In *K. Hashim v. State of Tamil Nadu*,46 it was held by Court that if one thing resembles another thing and if that is so and if resemblance is such that a person might be deceived by it, there will be presumption of the necessary intention or knowledge to make the thing counterfeit, unless the contrary is proved. It would be profitable for us to discuss in detail the provisions of Indian Penal Code, 1860 dealing with the offence of counterfeiting of coins and government stamps47.

2.4.1. COUNTERFEITING INDIAN COIN-

The Code has severally penalized the counterfeiting of Indian coin and in this regard section 232 of the Code provides that whoever counterfeits, or knowingly performs any part of the process of counterfeiting Indian Coin48, shall be punished with imprisonment for life49, or with imprisonment of either description for a which may extent to ten years, and shall also be liable to fine.50

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45 Section 28 of Indian Penal Code, 1860.
46 2004(4) RCR (Criminal) 983 (SC).
47 Section (230 – 263A) Indian Penal Code, 1860.
48 Subs. By the Act of 1950, for “The Queen’s Coin”.
49 Subs. By Act 26 of 1995, for “Transportation for life” w.e.f. 01.01.1956.
50 Section 232 of the Indian Penal Code, 1860.
The Supreme Court in *Velayudham Pillai v. Emperor*,\(^{51}\) has held that one of the basic elements of counterfeiting is intention to practice deception or practicing resemblance with knowledge that this resemblance is likely to result deception. Therefore, any act by which deception cannot be intended or any act from which likely result of deception cannot be deduced cannot amount to deception. So when there is no intention to circulate the coin and the offender only puts a counterfeit coin in the house of his enemy, the act cannot amount to an offence under Section 232.

**2.4.2 MAKING OR SELLING INSTRUMENTS FOR COUNTERFEITING INDIAN COIN**

Under Section 234 of the Code preparation to commit a crime has been made punishable. It would be beneficial for us to reproduce the language of section 234 of the Code which runs as under-

“Whoever makes or mends, or performs any part of the process of making or mending, or buys, sells or disposes of, any die or instrument, for the purpose of being used, or knowing or having reason to believe that it is intended to be used, for the purpose of counterfeiting [Indian coin], shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine”\(^ {52}\).

**2.4.3 POSSESSION OF INSTRUMENTS OR MATERIALS FOR THE PURPOSE OF USING THE SAME FOR COUNTERFEITING**

Mere possession of instrument and materials capable of counterfeiting coins is no offence. Possession of such instrument should be with the intention of counterfeiting coins and the same is punishable with imprisonment of either description for a term which may extend to three years and shall also be liable to fine and if the coin to be counterfeited is Indian coin, shall be punished with imprisonment of either description for a term which may extend to ten year and shall also be liable to fine.\(^ {53}\)

The Supreme Court in *Khadim Hussain v. Emperor*,\(^ {54}\) convicted the accused of an offence under this section, because he was having in his possession three “dies” and some instruments for the purpose of counterfeiting coins. He was a goldsmith by occupation and the instruments found with him were for his work as a goldsmith. The

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\(^{51}\) AIR 1937 Mad. 711.  
\(^{52}\) Section 234 of the Indian Penal Code, 1860.  
\(^{53}\) *Ibid* Section 235.  
\(^{54}\) AIR 1925 Lah. 22.
dies were deficient and complete counterfeiting coin could not be struck from them either singly or combined. It was held by the Supreme Court that it could not be inferred from the mere possession of the dies incapable of striking a complete coin that the accused intended to manufacture coins. The onus of proving the fitness of the material for the purpose of counterfeiting coin is upon the prosecution. Similarly in Zamir Hussain v. Crown, it was held that under section 235 only the person who is in possession can be convicted. The other person who are living with him and against whom all that can be said is that they knew or were in a position to know that there were instruments and materials for counterfeiting in the house cannot be held guilty of this offence. Upholding the above view in Lachminiya Thakurian v. Emperor, it was held that mere fact that the wife knew that certain instruments and materials are in the possession of her husband and also the place where those implements and materials were to be found does not necessarily indicate that she herself is in subordinate possession or in any kind of possession of them.

2.4.4 DELIVERY OF INDIAN COIN POSSESSED WITH KNOWLEDGE THAT IT IS COUNTERFEIT-

Delivery of Indian coin to another with the knowledge of its being counterfeit is a very serious offence and same is punishable with ten years imprisonment and with fine. The offence under section 240 has the following essential ingredients:

(1) That the accused fraudulently or with intent that fraud may be committed was possessed of counterfeit coins;
(2) That the accused had the knowledge at the time when he became possessed of it that it was a counterfeit coin;
(3) That the delivery of the Indian coin was made with the knowledge it was counterfeit.

The Hon’ble Court in Ganga v. State, has held that particular knowledge about the coin being counterfeit is not necessary to be established by positive evidence. The circumstances might indicate on which a reasonable presumption could be raised that the accused ought to have known at the time when he became possessed of the coin that they were counterfeit.

55 1950 Lah. 97.
56 AIR 1933 Lah. 34.
56 AIR 1925 Lah. 22.
56 1950 Lah. 272.
57 Section 240 of the Indian Penal Code, 1860.
58 1957 All LJ 283.
2.4.5 Counterfeiting Government Stamp-

Section 255 to 263A of Indian Penal Code provides punishment for offences relating to stamps issued by government. Counterfeiting of Government stamps has been made punishable by section 255 of the Code which provides that “whoever counterfeits, or knowingly performs any part of the process of counterfeiting, any stamp issued by Government for the purpose of revenue, shall be punished with [imprisonment for life] or with imprisonment of either description for a term which may extend to ten years and shall also be liable to fine.

Explanation – A person commits this offence who counterfeits by causing a genuine stamp of one denomination to appear like a genuine stamp of a different denomination.

2.4.6 SALE OF COUNTERFEIT GOVERNMENT STAMP-

Sale of counterfeit Government stamp has been made an offence under section 258 of the Code. It would be profitable for us to reproduce the language Section 258 of the Code which runs as under-

“Whoever sells, or offers for sale, any stamp which he knows or has reason to believe to be a counterfeit of any stamp issued by Government for the purpose of revenue shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine”.

In a landmark judgment of *Joti Prasad v. State of Haryana*, the accused were charged under sections 254, 255, 258, 467, read with section 120-B of the Code and charges leveled against them were that they had conspired to do the illegal act of counterfeiting of government stamps but trial court acquitted them all. On appeal to High Court confirmed the acquittal of all except the appellant who was convicted under section 258 and 259 of the Indian Penal Code on the ground that being a stamp vender he had knowledge or at least reason to believe that the stamps he was selling were counterfeit. On appeal to Supreme Court his plea that he purchased stamps from the treasury was rejected as he neither produced register maintained by him nor made any efforts to summon the treasury records, and conviction was upheld.

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59 Subs. By Act 26 of 1955, Section 117 and Sch., for “Transportation for life” (w.e.f. 01.01.1956)
60 Section 255 of the Indian Penal Code, 1860.
61 Ibid section 258.
62 AIR 1993 SC 1167.
2.4.7 HAVING POSSESSION OF COUNTERFEIT GOVERNMENT STAMPS-

The Indian Penal Code, 1860 makes possession of counterfeit government stamp a crime. This, in other words makes preparation to commit a crime a punishable offence. It would be beneficial for us to reproduce the provisions of section 259 of the Code which provides that whoever has in his possession any stamp which he knows to be a counterfeit of any stamp issued by Government for the purpose of revenue, intending to use, or dispose of the same as a genuine stamp, or in order that it may be used as a genuine stamp, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.63

2.4.8 USING AS GENUINE A GOVERNMENT STAMP KNOWN TO BE A COUNTERFEIT-

Section 260 of the Code prohibits using a counterfeit government as genuine. It says that whoever uses as genuine any stamp, knowing it to be counterfeit of any stamp issued by Government for the purpose of revenue, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.64

The Supreme Court in a landmark judgment of CBI, New Delhi v. Abdul Karim Telgi & others,65 where Telgi along with other co-accused Abdul Gafoor Mujahid, Anand G Thorat, Sachin Munna and Ashfaq had floated a company, M/S Prime Services, located at Nehru Place during 1997-98 for unauthorized trading and selling counterfeit stamps or non-judicial stamps in various parts of Delhi and adjoining areas. The accused had caused huge loss to the State exchequer by selling the counterfeit stamp papers. Telgi was held guilty under Sections 420 (cheating), 258 (sale of counterfeit government stamp), 259 (having possession of counterfeit government stamp), 260 (using as genuine a government stamp known to be a counterfeit) and 120 B (criminal conspiracy) of the IPC. The court upheld Abdul Karim Telgi’s seven-year imprisonment in the multi-crore scam.

63 Section 259 of the Indian Penal Code, 1860.
64 Ibid section 260.
2.5 OFFENCES RELATING TO WEIGHTS AND MEASURES-

Chapter XIII of Indian Penal Code, 1860\(^66\) deals with offences relating to weights and measures. The offences in this chapter do not have any reference to a precise weight or measure established by law. For that purpose there exists a separate law i.e. the Standard of Weights and Measures Act, 1956 which regulates this matter on the basis of the metric system fixing the standard weight of a kilogram, standard length of a meter and standard capacity of a liter. The main object of the Act is to establish standards of weights and measures based on the metric system. The standards established by the 1956 Act were based on the international system of units, recognized by the General Conference of Weights and Measures (CGPM) and the International Organization of Legal Metrology (OIML). Standards of weights and measures were subsequently revised by CGPM to SI units. In view of the revision by the CGPM of the standards of weights and measures and the changes in the law suggested by the OIML, the 1956 Act was replaced by a comprehensive legislation, the Standard of Weights and Measures Act, 1976 and the main object of the Act is to establish standards of weights and measures, to regulate inter-State trade or commerce in weights, measures and other goods which are sold or distributed by weight, measure or number.

2.5.1 FRAUDULENT USE OF FALSE INSTRUMENTS FOR WEIGHING-

The Indian Penal Code, 1860 makes fraudulent use of false instruments for weighing an offence. It provides that whoever fraudulently uses any instrument for weighing which he knows to be false, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine or with both.\(^67\)

Intention is an essential part of the offence under this section. The section requires two things.

1. Fraudulent use of any false instrument for weighing
2. knowledge that it is false.

The Supreme Court in *Harak Chand Marwari v. Emperor*\(^68\) has held that where both purchaser and seller are aware of the actual measure used, there can be no question of fraudulent intent. Confirming the above view the Supreme Court in

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\(^{66}\) Section 264-267 of Indian Penal Code, 1860.

\(^{67}\) Section 264 of the Indian Penal Code, 1860.

has held that where it was agreed between the seller and purchaser that a particular measure was to be used in measuring the commodity sold, it was held that, even though the measure was not of the standard requirement, it was not ‘false’ and there was no fraudulent intent within the meaning of this section.

2.5.2 FRAUDLENT USE OF FALSE WEIGHT OR MEASURE-

Section 265 punishes one who uses a false weight or false measure of length or capacity. It provides that whoever fraudulently uses any false weight or false measure of length or capacity, or fraudulently uses any weight or any measure of length or capacity as different weight or measure form what it is, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

The Supreme Court in Nurodin v. State has held that where the accused was authorized to sell liquor, sold liquor, by measuring it with a glass which was not the prescribed measure and of which he falsely misrepresented the capacity. It was held that he has committed an offence not under Section 265 but under Section 415 of the Indian Penal Code 1860. The use of false weight must be fraudulent. This means in view of Section 265, it must be accompanied by intend to defraud. Following the above trend in Bakhat Mal v. Emperor, where the accused was getting his grain measured with two Kathas, which he borrowed for the purpose from another person, who told him that the Kathas were passed by the Notified Area Committee and which were seized by the police, who found them to measure five tolas more than the standard katha and prosecuted the accused and he was convicted under Section 265 of the Code. However on appeal the Supreme Court held that the accused could not be convicted under Section 265 of the Code unless it was proved that he knew that the kathas were incorrect or that before he used them, he tampered with them. It was impressed in the case that in a case under Section 265, IPC it is duty of the prosecution to lead some evidence to prove that the accused knew the measure to be incorrect and in the absence of any such evidence there could be no presumption of fraudulent intention on the part of the accused.

69 AIR 2010 SC 545.
70 Section 265 of the Indian Penal Code, 1860.
72 AIR 1929 Nag. 239. See also Bharat Petroleum Corporation Limited and Ors. v. State of Jharkhand and others, 2014 Cri LJ 45 (Jhar.)
2.5.3 BEING IN POSSESSION OF FALSE WEIGHT OR MEASURE-

Section 266 of the Code punishes a person who is in possession of a false weight or measure just as Sections 235, 239 and 240 punish a person who is in possession of counterfeit coin and Sections 259 punishes a person who is in possession of counterfeit stamp. It would be helpful for us to reproduce the language of section 266 of the Code which runs as under-

“Whoever is in possession of any instrument for weighing, or of any weight, or of any measure of length or capacity, which he knows to be false, intending that the same may be fraudulently used, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both”.73

The Supreme Court in *Abdul latif v. State*,74 has held that if a dealer has a measure in his shop which has been tested by Government and certified to be a proper measure, there is no reason to presume that he could have known that it was not a correct measure or that at the time when the stamp was put on this measure it was not up to the prescribed standard. The law does not require the shopkeeper to have the measure tested periodically. If the measures are found to be short, there is no presumption that he was using them fraudulently. Deviating from the above trend in *Bansidhar v. State of Rajasthan*,75 where the evidence on record shows that the accused was sitting on the gunny bag beneath which true and false weights were recovered by the police officer, and series of false weights were found at distance of 4 meters from the series of true weights and that the box containing opium and the scales for weighing it were near the gunny bag beneath which false weights were found and the accused was the person who carried on the business of selling opium at the shop, the only inference that can be drawn from these circumstances is that the accused possessed false weights knowing that and intending that the same may be fraudulently used. So he was held guilty under section 266 of the Code.

2.5.4 MAKING OR SELLING FALSE WEIGHT OR MEASURE-

Making or selling false weight or measure has been an offence under section 267 of the Code which provides that whoever makes, sells or disposes of any instrument

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73 Section 266 of the Indian Penal Code 1860.
75 AIR 1959 Raj. 191.
for weighing, or any weight, or any measure of length or capacity which he knows to be false, in order that the same may be used as true, or knowing that the same is likely to be used as true, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.\textsuperscript{76}

2.5.5 NON-APPLICATION OF SECTIONS 265-267 OF INDIAN PENAL CODE, 1860-

After the enactment of the Standard of Weights and Measures (Enforcement) Act, 1985, there is little scope for application of section 265 to 267 of the Indian Penal Code 1860 to penalize a culprit using false weight or using a weight other than the standard weight. Section 66 of the Standard of Weights and Measure (Enforcement) Act, 1985 brings the matter beyond a pale of doubt.

The provisions of the Indian Penal Code (45 of 1960) in so far as such provisions relate to offence with regard to weights or measures, shall not apply to any offence which is punishable under this Act.\textsuperscript{77}

2.6 ADULTERATION OF FOOD STUFFS AND DRUGS-

India has been called the land of Annapurna i.e. Sanskrit name for girls meaning Devi Bhagwati, Goddess of Food. In Hinduism Annapurna is the universal and timeless kitchen goddess, the mother who feeds, without her there is starvation. This makes Annapurna a universal goddess. Food and water are not the elixir of life, but they are worshipped as Gods. In spite of this fact, the evil of food adulteration is not only present in the society to a great extent, but its history can be traced back to the times of Kautilya.\textsuperscript{78} According to Cambridge Advanced Learner’s Dictionary\textsuperscript{79} adulteration means to make food or drink weaker or lower its quality, by adding something else. According to English Collins Dictionary\textsuperscript{80} adulterate means to debase by adding inferior material. According to American Heritage Dictionary\textsuperscript{81} adulteration means to make impure or inferior by adding foreign substances to something: for example adulterate coffee with ground acorns; silver debased with copper; doctored the wine with water; rag paper loaded with wood fiber. In Kharak Singh v. State of

\textsuperscript{76} Section 267 of the Indian Penal Code, 1860.
\textsuperscript{77} Section 66 of the Standard of Weights and Measure Act, 1985.
\textsuperscript{79} Turnbull, Joanna, \textit{Cambridge Advanced Learner's Dictionary} 130(2010).
\textsuperscript{81} Houghton Mifflin, \textit{American Heritage Dictionary} 67(2008).
It was observed, that Article 21 means not merely the continuance of a person’s animal existence, but right to the possession of his organs, his arms and legs etc. It cannot be argued that health is not a part of life when possession of all organs of body is protected by the fundamental right to life. Taking issue of food adulteration very seriously the Apex Court in *Issar Das v. State of Punjab*, said that “adulteration of food is a menace to public health and the Statute had been enacted with the aim of eradicating that anti-social evils and for ensuring purity in the articles of food.” Similarly very recently in *Sunil Kumar v. State of Haryana*, it was held by the Supreme Court that adulteration of food is a menace to society and perpetrators cannot be let off lightly. Taking seriously the bad effect on public health the court held that benefit of the Probation of Offenders Act 1958 cannot be given to the accused. Recently in *Dwarik Prasad v. State of Assam*, no honest effort was made by the food inspector to secure the presence of independent witness and sample is taken in the presence of only his accompanying peon. So For protecting the rights of the accused the Court held that the conviction of the accused fo sale of adulterated food is improper.

The Supreme Court in *Nand Lal v. State of Utrrakhand & Anr.*, has held that adulteration means to mix with any other substance whether wholly different or of the same kind but of inferior quality. It is essential that an article of food or drink has been adulterated and that it was intended to sell such article. Adulteration of food stuffs, edibles and drugs which cause irreparable danger to public health. The Consumer Protection Act, 1986, the Prevention of Food Adulteration Act, 1954, the Food Safety and Standard Act, 2006, are enacted to prevent these offences which affect the public health. The constant rise in price and cost of living has made the consumer cost conscious. The unscrupulous traders take advantage of the situation and provide adulterated articles of food, drinks or drugs etc. at a cheaper rate and earn huge profits. They even do not hesitate to add poisonous constituents to articles of

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82 AIR 1963 SC 1295.
85 AIR 2012 SC 2430, See also *State of Punjab v. Mithu Singh* 1988 (3) SCC607.
87 AIR 2010 SC 688.
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{89} Despite the stringent provisions in the Indian Penal Code, 1860 the Prevention of Food Adulteration Act, 1954, the Food Safety and Standards Act, 2006 the menace of adulteration still subsists and laws have failed to eradicate this evil. It would be profitable for us discuss in detail the provisions of Indian Penal Code, 1860 which deal with adulteration of food stuffs and drugs.

\textbf{2.6.1 ADULTERATION OF FOOD OR DRINK INTENDED FOR SALE-}

The Code prohibits adulteration of such food or drink which is intended for sale. It would be relevant for us to reproduce the language of section 272 of the Code which runs as under:

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“Whoever adulterates any article of food or drink, so as to make such article noxious as food or drink, intending to sell such article as food or drink, or knowing it to be likely that the same will be sold as food or drink, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both”.\textsuperscript{90}
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The mixing of harmful ingredients in food or drink shall be punished under Section 272 of the Indian Penal Code, 1860. Mere adulteration with harmless ingredients for the purpose of getting more profit is not punishable under this section e.g. mixing water with milk or ghee with vegetable oil as the state of article has not become noxious nor has it become in a state unfit for being consumed as food or drink.

The Supreme Court in \textit{Rajiv Kumar Gupta v. State},\textsuperscript{91} where Rajnigandha Pan Masala was found containing magnesium carbonate, a banned substance but the company had given incorrect assertion in newspaper advertisement and also in application made for grant of license that Rajnigantha Pan Masala does not contain magnesium carbonate. It was held that since it would not be done without the knowledge and permission of directors, through investigation in the case would be in the public interest. So the proceedings against the directors of the company were refused to be quashed. Again in \textit{Adhiraj Amar Kannhatyalal Sarin & Ors. v. State of

\textsuperscript{89}Ibid.
\textsuperscript{90}Section 272 of the Indian Penal Code, 1860.
\textsuperscript{91}2006 Cri LJ 581.
Maharashtra, the Supreme Court has held that when there was no allegation in the complaint that offence of adulteration is committed at the instance of any of the directors of the company or as a result of neglect or connivance of such directors. It was held that complaint against the directors is liable to be quashed.

2.4.2 SALE OF NOXIOUS FOOD OR DRINK-

The sale of noxious food or drink is an offence under the Code and in this regard it would be beneficial for us to reproduce the language of section 273 of the Code which runs as under:

“Whoever sells, or offers or exposes for sale, as food or drink, any article which has been rendered or has become noxious, or is in a state unfit for food or drink, knowing or having reason to believe that the same is noxious as food or drink, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both”. 93

The section has following three important ingredients-

1. Selling or offering for sale as food or drink of some article.
2. Such article must have become noxious or must be in a state unfit for food or drink.
3. The sale or exposure must be made with knowledge or reasonable belief that the article is noxious as food or drink.

Section 272 punishes adulteration of food or drink, section 273 of the Indian Penal Code, 1860 penalizes the sale of adulterated articles. So selling toddy in which germs are gminated is punishable under Section 273 of the code. 94 The necessary ingredients of Section 273 of Indian Penal Code 1860 are that the offender should know or should have reason to believe that the commodity to be sold is noxious. The word "noxious" as stated in Advanced Law Lexicon by P. Ramanatha Aiyar 95 when used in relation to article of food is to means that the article is poisonous, harmful to health or repugnant to human use. The Supreme Court in Radhey Shyam Aggarwal v. State, 96 has held that not only the sale but also when food which is unfit for human

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92 2011 Cri LJ 1297(Mah).
93 Section 273 of the Indian Penal Code, 1860.
consumption is exposed for sale, the exposure constitutes an offence under section 273. In *Dhandapani v. State*,\(^7\) the manufacturer, supplier and retailer were prosecuted under section 273 of the Indian Penal Code 1860 as adulterated mustard oil was recovered from their possession. However prosecution failed to establish the link between petitioner, supplier and adulterated mustard oil. So it was held that the petitioner could not be charged under Section 273 of the Indian Penal Code. The Supreme Court in *Radha Krishan v. State*,\(^8\) where the accused person sold spurious liquor which resulted into death of person. The accused were having knowledge that liquor which they were selling is spurious and it may cause death of person consuming it. The chemical examination of viscera of the deceased showed that bottles recovered from the shop of accused contained alcohol with poison. So the conviction of accused was held proper.

### 2.6.3 ADULTERATION OF DRUGS-

Adulteration of drugs has been considered a serious offence at all times. Keeping in mind the gravity of this offence the Code provides that whoever adulterates any drug or medical preparation in such a manner as to lessen the efficacy or change the operation of such drug or medical preparation, or to make it noxious, intending that it shall be sold or used for, or knowing it to be likely that it will be sold or used for, any medicinal purpose, as if it had not undergone such adulteration, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.\(^9\)

Under this section adulteration of drug is punished. The purpose of this section is to preserve the purity of drugs for medicinal purpose. It is not necessary that such adulteration of drugs should become noxious to life, it is sufficient if the efficacy of a drug is lessened.

### 2.6.4 SALE OF ADULTERATED DRUG-

Section 275 of the Code deals with punishment for selling of adulterated drugs. It would be profitable for us to reproduce the language of section 275 the Code which runs as under:

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“Whoever, knowing any drug or medical preparation to have been adulterated in such a manner as to lessen its efficacy, to change its operation, or to render it noxious,
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\(^7\) 2005 *Cri LJ* 2847 (Mad.)

\(^8\) 2007 *Cri LJ* 1282 (Utt.).

\(^9\) Section 274 of the Indian Penal Code, 1860.
sells the same, or offers or exposes it for sale, or issues it from any dispensary for medicinal purposes as unadulterated, or causes it to be used for medicinal purposes by any person not knowing of the adulteration, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both”. 100

This section not only prohibits the sale of an adulterated drug but also its issue from any dispensary. However it may be found that sale of adulterated drug is also an offence under the Drugs and Cosmetic Act, 1940. Adulterated drugs have been defined in Section 17A of Drugs and Cosmetic Act. It runs as follows-

“A drug shall be deemed to be adulterated if it consists in whole or in part of any filthy putrid or decomposed substance”.

Section 27 of the Drugs and Cosmetic Act, 1940 provides whoever, himself or by any person on his behalf sells or exhibits or offers for sale or distributes any drug deemed to be adulterated under Section 17-A or spurious under Section 17-B or which when used by any person for or in the diagnosis, treatment, mitigation or prevention of any disease or disorder is likely to cause his death or is likely to cause such harm on his body as would amount to grievous hurt within the meaning of Section 320 of Indian Penal Code, solely on account of such drug being adulterated or spurious or not of standard quality as the case may be, shall be punished with imprisonment for a term which shall not less than five years but which may extend to a term of life and with fine which shall not be less than ten thousand rupees, therefore, the area of operation of Section 275 is co-extensive with Section 27 read with Section 17-A of the Drugs and Cosmetic Act. There is no question of any repeal by implication because the Drugs and Cosmetic Act, 1940 declared that the provisions of the Act shall be in addition to and not in derogation of the Dangerous Drugs Act 1930 and any other law for the time being in force. 101

2.7 MISAPPROPRIATION OF PUBLIC PROPERTY AND CRIMINAL BREACH OF TRUST—Section 403 to 409 of the Indian Penal Code 1860 deal with the offences of dishonest misappropriation of property and criminal breach of trust.

2.7.1 DISHONEST MISAPPROPRIATION OF PROPERTY—
Misappropriation means the intentional, illegal use of the property or funds of another person for one's own use or other unauthorized purpose, particularly by a public

100 *Ibid* section 275.
101 Section 2 of the Drugs and Cosmetic Act, 1940.
official, a trustee of a trust, an executor or administrator of a dead person's estate, or by any person with a responsibility to care for and protect another's assets (a fiduciary duty). Section 403 of the Indian Penal Code 1860 deals with offence of dishonest misappropriation of property. It provides that “whoever dishonestly misappropriates or converts to his own use any movable property, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both. Dishonestly is an essential ingredient of the offence and the Code provides that whoever does anything with the intention of causing wrongful gain to one person or wrongful loss to another person, is said to do that thing "dishonestly.”

The Supreme Court in Bhagiram Domev. Abar Dome, has held that under Section 403 criminal misappropriation takes place when the possession has been innocently come by, but where, by a subsequent change of intention or from the knowledge of some new fact which the party was not previously acquainted, the retaining become wrongful and fraudulent. Similarly in Mohammad Ali v. State, fifteen bundles of electric wire were seized from the appellant but none including electricity department claimed that wires were stolen property. Evidence on records showed that impugned electric wire was purchased by the applicant from scrap seller. Merely applicant not having any receipt for purchase of impugned wire it cannot be said that he is guilty of offence punishable under Section 403 of the Code. Order of framing charge was, therefore, was quashed by the Supreme Court and the accused was not held guilty under section 403 of the Indian Penal Code, 1860.

Again in U. Dhar v. State of Jharkhand, Bokaro Steel plant awarded a contract to M/S. Tata Iron and Steel Co. ltd. (TISCO) for certain work. TISCO completed supply part of work and erection part of work was entrusted to M/S Tata Construction and Projects Ltd (TCPL). TCPL in turn awarded contract to a Sub-Contractor U.
Dhar, the appellant. After completion of the work Sub-Contractor demanded payment from TCPL, the contractor. When they failed to receive payment they filed a complaint under Section 403, 406, 420 and 120B of the Indian Penal Code 1860. The complainant alleged that TCPL, the contractor has already received the money from SAIL for the work in question and it has misappropriated the same for its own use instead of paying it to complainant.

It was held that the contract between Bakaro Steel and TCPL is a separate and independent contract and the contract between complainant and TCPL is altogether a different contract. The contractual obligation under both the contracts is separate and independent of each other. The right and obligation of parties i.e. the complainant and TCPL are to be governed by the contract between them for which the contract between TCPL and Bakaro steel has no relevance. Therefore even if Bakaro steel has made the payment to TCPL under its contract, it will not give rise to plea of misappropriation of money because that money is not the money of complainant.

2.7.2 CRIMINAL BREACH OF TRUST-
The offence of criminal breach of trust has been defined under section 405 of the Indian Penal Code, 1860. The gist of the offence of criminal breach of trust as defined under section 405 of the Indian Penal Code, 1860 is ‘dishonest misappropriation’ or ‘conversion to own use’, another person’s property. The essential ingredients of the offence of criminal breach of trust are as under;

(1) The accused must be entrusted with the property or with dominion over it,
(2) The person so entrusted must use that property, or;
(3) The accused must dishonestly use or dispose of that property or wilfully suffer any other person to do so in violation,
(a) of any direction of law prescribing the mode in which such trust is to be discharged, or;

108 Section 405 of the Indian Penal Code, 1860.
(b) of any legal contract made touching the discharge of such trust.

The Supreme Court of India in *V.R. Dalal v. Yugendra Narang Thakkar*,\(^{109}\) has held that the first ingredient of criminal breach of trust is entrustment and where it missing, the same would not constitute a criminal breach of trust. Breach of trust may be held to be a civil wrong but when *mens-rea* is involved it gives rise to criminal liability also.\(^{110}\) In criminal breach of trust if the misappropriation is for a temporary period it would constitute a criminal breach of trust.\(^{111}\)

The expression direction of law in context of Section 405 would include not only legislations pure and simple but also directions, instruments and circulars issued by authority entitled therefore.\(^{112}\) In a landmark judgment of *Pratibha Ram v. Suraj Kumar*,\(^{113}\) the appellant alleged that her satridhan property was entrusted to her in–laws which they dishonestly misappropriated for their own use. She made out a clear, specific and unambiguous case against in–laws. The accused were held guilty of this offence and she was held entitled to prove her case and no court would be justified in quashing her complaint.

Deviating from the above trend in *Kailash Kumar Sanwatia v. State of Bihar*,\(^{114}\) the appellant went to the State Bank of India for taking two bank drafts of Rs. 75,000/- each. The appellant had carried Rs. 1,50,200/- with him. The total amount was handed over to accused, Ganauri Sao for the purpose of counting at the instance of accused Gautam Bose, the head cashier. The case peon told him that he would count the money and return the bag in which the money was carried at 2 p.m. Informant handed over case vouchers duly filled in to Amit Kumar Banerjee an officer of the bank and returned to his shop on being told that the draft will be handed over around 2.00 p.m. Around 1.00 p.m. the peon of the bank Jagdish come to his shop and told him that the money handed over by him was missing from the cash counter. It was held that even if there is loss of money, the ingredients necessary to constitute criminal breach of trust are absent. If due to a fortuitous or intervening situation, a person to whom

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\(^{114}\) 2003 Cri LJ 4313 (SC).
money is entrusted is incapacitated from carrying out the job, that will not being in application Section 405 of Indian Penal Code or Section 409 of Indian Penal Code, unless misappropriation or conversion to personal use or disposal of property is established. It has been observed, however, in *R.K Dalmia v. Delhi Administration*,\(^\text{115}\) that if a partner has been given authority by the other partners to collect money or any other property for the firm, he will be said to have the dominion over that property, and if he dishonestly misappropriates the same, he can be held liable under Section 405.

**2.7.3 PUNISHMENT FOR CRIMINAL BREACH OF TRUST**

Section 406 of the Code provides punishment for the offence of criminal breach of trust which runs as under-

“Whoever commits criminal breach of trust shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both”.\(^\text{116}\)

The Supreme Court in *Onkar Nath Mishra v. State (NCT of Delhi)*,\(^\text{117}\) has held that in the commission of the offence of criminal breach of trust two distinct parts are involved. The first consists of the creation an obligation in relation to property over which dominion or control is acquired by accused. The second is a misappropriation or dealing with property dishonestly and contrary to the terms of the obligation created. In another case of *Suryalakshmi Cotton Mills Ltd. v. Rajvir Industries Ltd.*\(^\text{118}\), it was held that a cheque is property and if the said property has been misappropriated or has been used for a purpose for which the same had not been handed over, a case under Section 406 of the Code may be found to have been made out.

Similarly in *S.K. Alagh v. State of U.P. and others*,\(^\text{119}\) where demand drafts were drawn in the name of company for supply of goods and neither the goods were sent by the company nor the money was returned, the Managing Director of the company cannot be said to have committed the offence under Section 406 of Indian Penal Code. It was further pointed out that in absence of any provision laid down under statute, a director of a company or an employer cannot be held vicariously liable for any offence committed by company itself.


\(^{116}\) Section 406 of the Indian Penal Code, 1860.

\(^{117}\) 2008(1) RCR (Criminal) 336.

\(^{118}\) AIR 2008 SC 1683.

\(^{119}\) 2008 Cri LJ 2256 (SC).
Recently the Supreme Court in *K. Neelaveni v. State*,\(^{120}\) where the appellant, Neelaveni was married to accused Shiv Kumar on 3-9-1997 and gold ornaments and other articles were given by her parents. She in her report alleged that her husband used to abusing her and her family members under influence of alcohol and demanded Rs. 50,000/- from her parents. When she was pregnant, on scan it was found that she was carrying a female fetus, her husband and his family members insisted for aborting the child. On her refusal to give consent for abortion she alleged that on 18-01-98 her husband, mother-in-law, brother-in-law and sister-in-law assaulted her and had driven her out from the matrimonial home. Her husband left her on way to her parent’s house. She gave birth to a girl child on 25-06-98. On these facts case under section 406, 494 and 498-A of the Indian Penal Code 1860 was registered against the accused person.

It was held that on a perusal of the allegation made in FIR they have to be accepted as true at this stage and the allegation so made prima facie constitute offences under Section 406 and 494 of the Indian Penal Code, 1860. It has to be borne in mind that while considering the application for quashing of the charge sheet, the allegation made in the FIR and the materials collected during the course of investigation are required to be considered. Truth-fullness or otherwise of allegation is not fit to be gone into at this stage as it is always a matter of trial. It was further held that the High Court erred in holding that the charge sheet does not reveal the ingredients constituting the offences under section 494 and 406 of the Indian penal code. Therefore the judgment of High Court was set aside by the Supreme Court.

After analyzing all the cases we may conclude that for an offence to fall under this section all the four requirements are essential to be fulfilled.

1. The person handing over the property must have confidence in the person taking the property so as to create a fiduciary relationship between them or to put him in position of trustee.
2. The accused must be in such a position where he could exercise his control over the property i.e; dominion over the property.
3. The term property includes both movable as well as immovable property within its ambit.

\(^{120}\) (2010) 3 Cri LJ 2819 (SC).
(4) It has to be established that the accused has dishonestly put the property to his own use or to some unauthorized use. Dishonest intention to misappropriate is a crucial fact to be proved to bring home the charge of criminal breach of trust.

2.7.4 CRIMINAL BREACH OF TRUST BY PUBLIC SERVANT OR BY BANKER, MERCHANT OR AGENT-

The acts of criminal breach of trust done by strangers is treated less harshly than acts of criminal breach of trust on part of the persons who enjoy special trust and also in a position to be privy to a lot of information or authority or on account of the status enjoyed by them, say as in the case of a public servant. In respect of public servants a much more stringent punishment of life imprisonment or imprisonment up to 10 years with fine is provided. This is because of special status and the trust which a public servant enjoys in the eyes of the public as a representative of the government or government owed enterprises.

The Code provides that whoever, being in any manner entrusted with property, or with any dominion over property in his capacity of a public servant or in the way of his business as a banker, merchant, factor, broker, attorney or agent, commits breach of trust in respect of that property, shall be punished with\(^1\) imprisonment for life, or\(^2\) with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.\(^3\)

The persons having a fiduciary relationship between them have a greater responsibility for honesty as they have more control over the property entrusted to them, due to their special relationship. Under this section the punishment is severe and the persons of fiduciary relationship have been classified as public servants, bankers, factors, brokers, attorneys and agents.

In Bagga Singh v. State of Punjab,\(^4\) the appellant was a taxation clerk in the Municipal Committee, Sangrur. He had collected arrears of tax from tax-payers but the sum was not deposited in the funds of the committee after collection but was deposited after about 5 months. He pleaded that money was deposited with the cashier Madan Lal a co-accused who had defaulted the same. But the cashier proved that he had not received any such sum and was acquitted by lower court. Mr. Bagga Singh had not obtained a receipt from the cashier for passing the money to him. It was held

\(^1\) Subs. by Act 26 of 1955, sec. 117 and Sch., for “transportation for life” (w.e.f. 1-1-1956).
\(^2\) Section 409 of the Indian Penal Code, 1860.
\(^3\) 1996 Cri LJ 2883 (SC).

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that there was no practice to pass on money to the cashier without obtaining receipt and the accused clerk had not obtained any such receipt. Therefore the mere fact that the co-accused cashier was acquitted was not sufficient to acquit accused in the absence of any proof that he had discharged the trust expected of him. As such the accused was liable under section 409 of Indian Penal Code, 1860.

Following the above trend the Supreme Court in *Bachchu Singh v. State of Haryana*,\(^{124}\) where the appellant was working as Gram Sachiv for eight gram Panchayats. He collected a sum of Rs. 648 from thirty villagers towards the house tax and executed receipts for the same. He was charged under Section 409 of Indian Penal Code 1860. As he was a public Servant, and in that capacity he collected money as house tax but did not remit the same. It was held that the appellant dishonestly misappropriated or converted the said amount for his own use and his conviction under Section 409 of Indian Penal Code 1860 was upheld by the Supreme Court. Very recently in *Girish Saini v. State of Rajasthan*\(^{125}\) a public servant was accused of not depositing nor making entries of stationery required for official purpose. Accused public servant was in charge of the store in the concerned department at the time of the commission of the offence. Hence entrustment was proved. It was held accused could not take the benefit of misplacing of one of registers of company as he could not prove maintenance of two registers by department. Hence, the accused was held guilty of committing criminal breach of trust. It was further held by the court that taking into consideration large scale increase in corruption in public life from top to bottom and more particularly to fact that appellant being a public servant misappropriated stationery article which was supplied for office purpose, hence the punishment awarded by trial court cannot be said to be excessive. Hence, the punishment was sustained.

In *R.C. Soda v. State of H.P.*\(^{126}\) appellant- accused person were alleged to have disbursed money under scheme for construction of latrines which never reached beneficiaries. The accused persons took the plea that he had signed relevant certificate in good faith on asking of superintendent in office BDO. The plea of the accused persons was held to be tenable. There was no evidence to show that the accused in his capacity as DDO was responsible for disbursement of incentive money to

\(^{124}\) 1999 Cri LJ 3528 (SC).
\(^{125}\) 2012 Cri LJ 246(Raj).
\(^{126}\) 2011 Cri LJ 600 (H.P.)
beneficiaries or that he took part in actual disbursement or that there was conspiracy to defalcate money. Similarly other accused persons having signed latrine completion certificate in good faith on asking of Superintendent also was not improbable. It was held that as the case against accused persons could not be established beyond doubt, order of conviction was liable to be set aside.

2.8 CHEATING-

According to Oxford Advanced Learner's Dictionary\textsuperscript{127} cheating means to trick somebody or make them believe something which is not true or to act in a dishonest way in order to gain an advantage, especially in a game, a competition, an exam, etc. According to Macmillan Dictionary\textsuperscript{128} cheating means to behave dishonestly, or to not obey rules, for example in order to win a game or do well in an examination. According to Black’s Law Dictionary\textsuperscript{129} cheating includes deceitful practices in defrauding or endeavoring to defraud another of his known right, by some willful device, contrary to the plain rules of common honesty.

Section 415 to 420 of Indian Penal Code, 1860 deals with the offence of cheating. In most of the offences relating to property the accused merely got possession of thing in question, but in case of cheating he obtains possession plus property in it.

Section 415 of Indian Penal Code defines the offence of cheating. The main ingredients of cheating are as under-

(i) deception of person

(ii) fraudulent or dishonest inducement of any person to deliver any property to any person.

(iii) to consent to the retention thereof by any person or to intentionally induce that person to do or omit to do if he was not so deceived.\textsuperscript{130}

The Supreme Court of India in \textit{Iridium India Telecom Ltd. v. Motorola Incorporated and Ors.},\textsuperscript{131} has held that deception is necessary ingredient under both parts of section. Complainant must prove that inducement has been caused by deception exercised by accused. It was held that non-disclosure of relevant information would also be treated a misappropriation of facts leading to deception.

\textsuperscript{127} Turnbull, Joanna, \textit{Oxford Advanced Learner’s Dictionary} 234 (2010)

\textsuperscript{128} Mark Allen, \textit{Macmillan Dictionary} 123 (2002).

\textsuperscript{129} Henry Campbell Black, \textit{Black’s Law Dictionary} 350 (1968).


\textsuperscript{131} 2011(1) SCC 74.
Similarly in *Kanumukkia Krishnamurthy v. State of Madras*, the accused misrepresented to the Public Service Commission as to his age and qualification, so he is found guilty under this section. Again in *Abhayanand Mishra v. State of Bihar*, the accused applied to the University for permission to appear as a private candidate in the M.A. degree examination. In support of his eligibility, he forwarded certificates showing that he had obtained a graduate degree and also certain certificate purporting to be from the headmaster of the school. The university however received information that the certificates were fake and that the accused was not really a teacher.

The Supreme Court held that the accused was guilty of having committed an offence under Section 420 read with Section 511 of the Indian Penal Code 1860. If the accused have appeared in the examination on the basis of fake certificate then he would have been guilty of cheating.

Very recently in *Sanjay Chandra v. Central Bureau of Investigation*, the charge is that of cheating and dishonestly inducing delivery of property. There are seventeen accused persons. The statements of the witnesses run into several hundred pages and the documents on which reliance is placed by the prosecution is voluminous. The trial may take considerable time and it looks that the appellants, who are in jail, have to remain in jail longer than the period of detention, had they been convicted. It is not in the interest of justice that accused should be in jail for an indefinite period. No doubt, that the offence alleged against the appellants is a serious one in terms of alleged huge loss to the State Exchequer, that by itself, should not deter from enlarging the appellants on bail when there is no serious contention that the accused, if released on bail, would interfere with the trial or temper with evidence. It was held that there is no good reason to detain the accused in custody, that too, after the completion of the investigation and filing of the charge-sheet. So the accused were enlarged on bail.

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132 AIR 1965 SC 333.
133 AIR 1961 SC 1698.
134 AIR 2012 SC 830.
2.8.1 PUNISHMENT FOR CHEATING-
Section 417 of the Code provides punishment for the offence of cheating which runs as under;

“Whoever cheats shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both”.\(^\text{135}\)

This section punishes simple cases of cheating. The Supreme Court in *M.N. Ojha and Others v. Alok Kumar Srivastan and another*,\(^\text{136}\) has held that where the intention on the part of the accused is to retain wrongfully the excise duty which the State is empowered under law to recover from another person who has removed non-duty paid tobacco from one bonded warehouse to another, they are held guilty under this section. In *Jayuddin v. State*\(^\text{137}\) the accused on false promise to marry the prosecutor committed sexual intercourse with her who became pregnant. It is held that the accused will be said to have caused damage or harm to her body, mind and reputation which constituted offence of cheating. But in *Zindar Ali v. State of West Bengal*\(^\text{138}\) deviating from the above trend the Supreme Court has held that where the accused committed sexual intercourse with the prosecutrix who was major on the promise of marriage. After intercourse accused did not marry her. But it was held that by itself may not amount to cheating.

2.8.2 CHEATING AND DISHONESTLY INDUCING DELIVERY OF PROPERTY-
Whoever cheats and thereby dishonestly induces the person deceived to deliver any property to make, alter or destroy the whole or any of a valuable security, or anything which is signed or sealed, and which is capable of being converted into a valuable security, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.\(^\text{139}\)

In *Ambarish Rangshashi Patnigere v. State of Maharashtra*,\(^\text{140}\) where the accused got himself nominated to Engineering College against State government quota through a fake certificate. The court ruled on the evidence produced and held

\(^{135}\) Section 417 of the Indian Penal Code, 1860.
\(^{136}\) AIR 2010 SC 201.
\(^{137}\) 2007 Cri LJ (NOC) 198 (Gau).
\(^{138}\) 2009(2) RCR (Criminal) 26.
\(^{139}\) Section 420 of the Indian Penal Code, 1860.
that order of acquitting the accused was liable to be set aside. Adopting the same approach in *Monika Bedi v. State of A.P.*\(^{141}\) the Supreme Court has held that where the accused obtained second passport in a assumed name by submitting false documents. She used that passport to travel Portugal. Conviction of accused was held proper. However sentence was reduced to the period already undergone by the accused. In the absence of culpable intention at the time of making initial promise offence under Section 420 is not proved. It was further held that mere breach of contract does not necessarily involve cheating.\(^{142}\) In a case where the accused withdraws money on false pay bills, the bills being written and signed by the accused himself, the amount so withdrawn cannot be said to be entrusted to him, the accused may be guilty of cheating but not of criminal breach of trust.\(^{143}\)

Similarly in *Harmanpreet Singh Ahluwalia and Others v. State of Punjab*,\(^{144}\) where the complainant was a permanent resident of Canada who got married his daughter in India with appellant, an Indian citizen who later on went to Canada. Parties were married in 2000. Dispute between the parties arose for the first time in the year 2003. Wife, however, on an application filed by the appellant husband apprehending danger to his life, categorically admitted her fault and guilt. Even at that point of time no allegation of cheating and non-return of stridhan were made. It is only after three years when the disputes and differences between the parties wrecked up once again and on filing of an application for divorce, the father of the wife came from Canada to Jalandhar (India) to lodge FIR against appellant and his parents for criminal breach of trust in respect of articles given in dowry and for cheating. It was held that the allegations contained in FIR were made with ulterior motive to harass appellants. Therefore, continuance of proceedings would be liable to be quashed under Section 482 of Code of Criminal Procedure 1973. Similarly in *Mohd. Ibrahim and Others v. State of Bihar and another*,\(^{145}\) accused is alleged to have executed false sale deeds. A

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\(^{141}\) AIR 2011 SC 427.
\(^{143}\) Shanker Lal *v.* State of M.P., Cri LJ 2008(MP).
complaint is filed by real owner of property. Accused has a bonafide belief that the property belonged to him. Purchaser also believed that suit property belongs to accused. It is held that accused is not guilty of cheating as ingredients of cheating are not present.

2.9 FORGERY-

The business world relies heavily on the production and exchange of legitimate documents to express legal rights and obligations, prove important facts, and exchange vital information. When these documents are falsified in any way, this is known as forgery. Forgery is any act involving the making, altering or possessing of illegitimate or false documents which are intended to deceive or defraud another person or organization.146 Forgery can involve the false making of anything handwritten, type written, computer generated, printed or engraved from scratch that is intended to defraud. Forgery can also involve significant material alteration of a genuine document. Forgery is commonly committed in order to defraud the government or a business, to accomplish identity theft or the falsification of one’s identity. Chapter XVIII of Indian Penal Code, 1860 deal with offences relating to documents and to property marks. Before discussing the gravity of this crime we must look at the definition of forgery given under the Code. It would be profitable for us to reproduce the language of section 463 which runs as under:

147[“Whoever makes any false document or false electronic record or part of a document or electronic record, with intent to cause damage or injury], to the public or to any person, or to support any claim or title or to cause any person to part with property, or to enter into any express or implied contract, or with intent to commit fraud or that fraud may be committed commits forgery”.148

The Supreme Court of India in Ramchandran v. State,149 has held that to constitute an offence of forgery document must be made with dishonest or fraudulent intention. A person is said to do a thing fraudulently if he does that thing with intent to defraud but not otherwise.


147 Subs. By Act 21 of 2000, Sec. 91 and Sch. 1, for certain words (w.e.f. 17.10.2000)

148 Section 463 of the Indian Penal Code, 1860.

2.9.1 PUNISHMENT FOR FORGERY-

Whoever commits forgery shall be punished with imprisonment of either description for a term which may extend to two years, or with fine or with both.\textsuperscript{150}

The Supreme Court of India in Parminder Kaur v. State of UP,\textsuperscript{151} has held that mere alteration of document does not make it a forged document. Alteration must be made for some gain or for some objective. Following the same trend in Tulsibhai Jivabhai Changani v. State of Gujarat,\textsuperscript{152} where the accused used a duplicate certificate knowing it to be false for gaining admission to polytechnic course. She was held guilty under this section. Similarly in Ambarish Rangshahi Patnigere v. State of Maharashtra,\textsuperscript{153} where the accused got himself nominated to engineering college against State government quota through a fake certificate. The Supreme Court relied on the evidence produced and held that order of acquitting the accused was liable to be set aside.

The Supreme Court in State of U.P. v. Ranjit Singh,\textsuperscript{154} where the respondent who was stenographer of a Judge of Allahabad High Court was charged for fabricating forged bail order for accused Khelawan. The High Court had held that since the accused had not signed the bail order, the same cannot be said to constitute a document and the ingredient of the offence under Sections 466 and 468 of the Indian Penal Code 1860 have not been satisfied. The bail order in question was written by the accused. The Supreme Court held that in view of the fact that under Section 464, of Indian Penal Code, 1860, a person is said to make a false document who dishonestly or fraudulently makes, signs, seals or executes a document or part of a document, the reasoning of the High Court that the bail order without the signature cannot be said to be a document attracting the provisions of Section 464, Indian Penal Code and is wholly unsustainable.

It was further held that it is by virtue of preparing a false document purporting it to be a document of a court of justice and by virtue of such document a person who is not entitled to be released on bail could be released then, undoubtedly damage or injury has been caused to the public at large and therefore, there is no reason why

\textsuperscript{150} Section 465 of the Indian Penal Code, 1860.
\textsuperscript{152} AIR 2001 SC 267.
\textsuperscript{153} AIR 2011 SC 515.
\textsuperscript{154} AIR 1999 SC 1201.
under such circumstances the accused who is the author of such forged document cannot be said to have committed offence under Section 466 of the Indian Penal Code 1860. Therefore the accused was held guilty under Section 465 of the Indian Penal Code 1860.

The Supreme Court in Parminder Kaur v. State of U.P.,\(^{155}\) has held that to attract the second clause of Section 464 there has to be alteration of document dishonestly and fraudulently. So in order to attract the clause “secondly” if the document is to be altered it has to be for same gain or with such objective on the part of the accused. Merely changing a document does not make it false document. Therefore, presuming that figure ‘1’ was added in date in document in question as was done in this case, it cannot be said that the document became false for the simple reason that the appellant accused had nothing to gain for the same and she was not going to save the bar of limitation.

Similarly in Smt. Monaka Devi &Ors. v. State of Bihar & Anr.\(^{156}\) the accused was charged under Section 465 of the Indian Penal Code in 1992. She suffered the mental agony for more than 17 years. She also remained in custody for some time. There was amicable settlement done between the parties. It was held by the Court that since there is no criminal antecedent of accused, it is a fit case for reduce the sentence to period already undergone in custody. But in Rakesh Kumar Chhabrav. State of H.P.,\(^{157}\) deviating from the above trend where the accused person in course of appointment of Physical Education teacher done some illegal act by increasing marks of any particular applicant in return of pecuniary advantage. It is held that the conduct of the accused person did not fall under the definition of forgery but falls under definition of falsification of record.

Similarly in Shiv Charan & Ors. v. State of Rajasthan & Anr.,\(^{158}\) where the offence of cheating and forgery were said to be committed in year 1990. Complaint was filed in the year 1996. Cognizance was taken in year 2002. It was held that inordinate delay of twelve years vitiated prosecution as being violative of fundamental right of the accused to speedy trial. Prosecution was going on for last


\(^{156}\) 2012 Cri LJ 83 (Pat.)


\(^{158}\) 2012 Cri LJ 211 (Raj).
twenty one years. Civil litigation was also going on between parties. Three of the accused persons including the principle accused has already expired. It was held that prosecution is suffering from Laches. Therefore the order of taking cognizance is liable to be quashed.

Similarly in *BalbirKaur v. State of Punjab*, the allegation against the accused was that she furnished a certificate to get employment as ETT teacher which was found to be bogus and forged in as much as school was not recognized for period given in certificate. However the certificate does not anywhere say that school was recognized. It was held that merely indicating teaching experience of the petitioner, per-se, cannot be said to indicate wrong facts. So the direction which was issued for prosecution is liable to be quashed.

### 2.8 COUNTERFEITING OF CURRENCY

Section 489A, 489B, 489C and 489D were introduced in order to provide more adequately for the protection of currency notes and bank notes from forgery. Under the Indian Penal Code 1860, which was passed prior to the existence of paper currency in India, currency notes were not protected by any special provisions, but merely by the general provisions, applying to the forgery of valuable securities. Before these sections were introduced charges for forging currency notes had to be preferred under Section 467 and for making or possessing counterfeit plates under Section 472.

#### 2.10.1 COUNTERFEITING CURRENCY NOTES OR BANK NOTES

Counterfeiting of currency notes or bank notes is a very serious offence and has been severely punished by the Code under section 489-A which provides that whoever counterfeits or knowingly performs any part of the process of counterfeiting, any currency note or bank note, shall be punished with imprisonment of either description for a term which may extend to ten years and shall also be liable to fine.

Section 489-A provides punishment for counterfeiting of knowingly performing any part of the process of counterfeiting any currency note or bank note. To bring home an offence under section 489-A the prosecution has to prove that the relevant note in question is allegedly a currency note or bank note and the accused counterfeited it or knowingly performed any part of process of counterfeiting it. The

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159. 2011Cri. L.J. 1546(P&H).
161. Section 489-A of the Indian Penal Code, 1860.
offence under section 489A is cognizable, non-bailable and non-compoundable and triable by Court of Session.

The Supreme Court of India in *Ponnumswamy v. State*,\(^{162}\) where the accused was charged to having in possession of the forged currency notes which he has used in purchasing the paddy from the complainant. On being asked as to wherefrom he had obtained the said currency notes he could not furnish a satisfactory explanation. It was held that conviction of the accused under section 489-A was proper. The Supreme Court in *Uma Shankar v. State of Chhattisgarh*,\(^{163}\) has held that mens-rea is very essential for conviction of economic offences under Section 489B and 489C of Indian Penal Code1860. These provisions are not meant to punish unwary users or possessors of fake currency notes and bank notes. Similarly adopting the same approach in *Saiyyad Aftikhar Hussain v. State of Punjab*,\(^{164}\) the Supreme Court has held that where a counterfeit currency note of Rs.500/- was recovered from the accused. There was no evidence so show that accused knew or had reason to believe that the note in his possession was forged or counterfeit and also intended to use the same as genuine. The conviction of the accused was liable to set aside. Following the same trend in *Prabakar Narayan Patola & Anr. v. State of Maharashtra*,\(^{165}\) the Supreme Court has held that where the accused tried to use counterfeit currency notes for purchasing beer bottles. Evidence of witness also showed that the accused had used fake currency notes for purchasing cigarettes packets also. Counterfeit currency notes were recovered from the possession of the accused. So the conviction of accused under Sections 489-A was held proper. Again in *K. Hashim v. State of Tamil Nadu*,\(^{166}\) it is held by the Supreme Court that section 489-A becomes applicable where accused knowingly performed any part of the process of counterfeiting. Similarly *Jayesh Kumarn Kantilal Panchal v. State of Gujarat*,\(^{167}\) the Hon’ble Court has held that where the accused was a qualified engineer. He explained process of preparing of fake currency note. Xerox machine and other material used for preparing counterfeit currency notes and bundle of fake currency notes were recovered from him in the

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\(^{164}\) 2011 Cri LJ 738(Mah).

\(^{165}\) 2004 (4) RCR (Criminal) 983 (SC).

\(^{166}\) 2008(1) RCR (Criminal) 39.
presence of police officer. His conviction under this section was upheld. In *M.Mammutti v. State*,\(^{168}\) it was held that where the currency were of such a nature a mere look at them would not convince anybody that they were counterfeit, a conviction could not be sustained. It was held in *K. Hasim v. State of Tamil Nadu*,\(^{169}\) that Section 489-A not only deals with complete act of counterfeiting but also covers case where accused performs any part of process of counterfeiting. Similarly in *State of Kerala v. Mathai Verghese*\(^{170}\) the respondents were charged with offences punishable under S. 120B, 489A, 489C and S.420 read with Ss. 511 and 34 IPC for forging and counterfeiting American dollar notes of 20 dollar denomination, by printing 2000 such notes. Respondents 1 and 2 were further alleged to have been in possession of 148 forged currency notes knowing the same to be forged, with intent to use these forged notes as genuine. The accused-respondents contended before the Sessions Court that a charge under S. 489A and 489C of the IPC could be lawfully leveled only in the case of counterfeiting of 'Indian' currency notes and not in the case of counterfeiting of 'foreign' currency notes. The Sessions Court upheld the aforesaid contention and discharged the accused-respondents. The High Court also confirmed the aforesaid order of discharge.

Allowing the appeal by appellant-State and remanding the case to the trial court, the Supreme Court held that the High Court was wrong in holding that Ss. 489A to 489E are not applicable to currency notes other than Indian currency notes and that counterfeiting of or possessing of counterfeit dollar bills or dollar notes is not an offence under the Indian Law. Therefore, the judgment and order of discharge rendered by the High Court are reversed and set aside. It was held that the prohibition against counterfeiting of currency notes in Section 489A operates in respect of currency notes of not only India but of all other countries also.

### 2.10.2 Using as genuine, forged or counterfeit currency-notes or bank-notes\(^{171}\)

Section 489B relates to using as genuine forged or counterfeiting currency notes or bank notes. It would be profitable for us to take a look at the language of section 489-B of the Code which runs as under:

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\(^{168}\) AIR 1979 SC 1705.

\(^{169}\) 2005 Cri. L.J. 143 (SC)


\(^{171}\) Added by Act 12 of 1899, sec. 2.
“Whoever sells to, or buys or receives from, any other person, or otherwise traffics in or uses as genuine, any forged or counterfeit currency-note or bank-note, knowing or having reason to believe the same to be forged or counterfeit, shall be punished with\textsuperscript{172} [imprisonment for life], or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine”.\textsuperscript{173}

This section resembles Ss. 239, 241, and 258 of the Code. It provides against trafficking in forged or counterfeit notes. Selling or buying or receiving or otherwise using as genuine any forged or counterfeit currency notes or bank note is an offence under section 489-B provided the delinquent knows or having reason to believe the same to be forged or counterfeit, uses it. The knowledge or reason to believe are the \textit{mens-rea} for the offence U/S. 489-B.

The Supreme Court of India in \textit{K. Hasim v. State of Tamil Nadu},\textsuperscript{174} has opined that the object of enacting this section is to stop the circulation of forged notes, by punishing all persons who knowing or having reason to believe the same to be forged do any act which could lead to their circulation. Similarly in \textit{Shashikant Gulabchand Bora and etc. v. State of Maharashtra},\textsuperscript{175} the entire evidence on record showed that notes which were said to be counterfeit were such that by naked eyes they cannot be viewed as counterfeits. Bank officials who were expert also could not even by examining them under ultraviolet rays says with certainty that said notes were fake or counterfeit. Report of security press also showed that length, width of said notes and size of printed design was perfect. So it was held that accused as a layman could not have knowledge or reason to believe that said notes were counterfeit notes. So it was held by the court that the accused would be entitled to acquittal. Again in \textit{Tej Pratap Singh v. State},\textsuperscript{176} the accused was charged under Section 489-B of the Indian Penal Code 1860. The accused took the plea of tampering of evidence by the prosecution

\textsuperscript{172} Subs. by Act 26 of 1955, sec. 117 and Sch., for “transportation for life” (w.e.f. 1-1-1956).
\textsuperscript{173} Section 489B of the Indian Penal Code, 1860.
because there was difference in numbers of the currency notes. The prosecution mentioned 1040 currency notes but Government, records had 1038 currency notes. Inspector also stated in his cross-examination about the hurry in counting currency notes and there was possibility that one or two currency notes may have been less. It was held that mere defect in investigation will not thereby render prosecution’s case untrustworthy nor it is a ground for acquittal of the accused. So the conviction of the accused under Section 489-B of the Indian Penal Code 1860 was held to be proper.

2.10.3 POSSESSION OF FORGED OR COUNTERFEIT CURRENCY NOTES OR BANK NOTES

Possession of forged or counterfeit currency notes or bank note has been made punishable by the Code. It would be beneficial for us to reproduce the language of Section 489C of the Code which runs as under:

“Whoever has in his possession any forged or counterfeit currency-note or bank-note, knowing or having reason to believe the same to be forged or counterfeit and intending to use the same as genuine or that it may be used as genuine, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both”.

The Supreme Court in Bachan Singh v. State Of Punjab, has held that mere possession of forged or counterfeit currency notes or bank notes does not make one guilty under this section. The accused must have the knowledge or he must have reason to believe that the same is forged or counterfeit. He must have the intention to use the same as genuine or that it may be used as genuine. Similarly, adopting the same approach in Mammutti v. State, the accused was caught while changing a counterfeit two rupee currency note, and ninety nine more such notes were recovered from him, and he explained that he had received them from a person to whom he had sold tamarind, and the appearance of the notes did not suggest easily that they were counterfeit, so it is held by the Supreme Court that accused cannot convicted under

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177 Added by Act 12 of 1899, sec. 2.
178 Section 489-C of the Indian Penal Code, 1860.
180 AIR 1979 SC 1705.
section 489C of the Code. In another case of *Vijayan v. State of Kerla*\(^{181}\) it is stated that even at the first blush court was convinced that currency notes found in the possession of the accused were counterfeit as these were different in colour. The Kerla High Court held that the accused had full knowledge that these were counterfeit and so he was held guilty under section 489-C of the Code. Following the same trend in *Golo Mandla Rama Rao v. State of Jharkhand*\(^{182}\) where the accused were in possession of counterfeit currency notes. They had the requisite mens-rea to use them as genuine. The Jharkhand High Court held that they are liable to be convicted under section 489-C and 489-B. The accused in whose possession the machinery and instruments used for printing of those notes were found were rightfully convicted under section 489-A and 489-D of the Code.

### 2.10.4 PRESENT POSITION IN PUNJAB REGARDING OFFENCES OF FAKE CURRENCY-

In most of the cases registered by the police only fake currency is recovered by the police from the accused. If fake currency is recovered from the accused then only the offence under section 489-C of IPC is made out. Due to lack of knowledge regarding these laws the investigating officer often imposed all the offences regarding fake currency from 489-A to 489-D. Mostly the investigating officer did not collect the evidence to prove the offences under section 489-A to 489-D. The result is that only the offence under section 489-C is made out and the accused is released on bail because it is a bailable offence.

### 2.10.5 IMPROVEMENTS REQUIRED IN THE INVESTIGATION TO PROVE OFFENCE UNDER 489-A OF THE CODE-

I. These days the fake currency which is recovered from the accused is prepared by the use of advance technology and it cannot be prepared by the ordinary criminal. If fake currency is prepared in the press then section 489 A of I.P.C should not be imposed.

II. If the accused has himself prepared the fake currency then this fact must be brought on the record of the case diary. The machinery which is used in preparing fake currency must be taken into possession and the opinion of

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the expert must be taken that the machinery and other equipment recovered are used to make fake currency.

2.10.6 EVIDENCE REQUIRED TO PROVE THE OFFENCE UNDER SECTION 489-B OF THE CODE-

(1) To prove the offence under section 489-B evidence must be collected to show that the accused tried to use the fake currency. The evidence of that person must be brought on the record to whom the accused tried to give fake currency.

(2) Investigating officer does not collect the evidence to prove the offence under this section. Every effort should be made by the investigating officer to collect the evidence so that he can prove this offence. In case he does not succeed the offence under this section should not be imposed.

2.10.7 EVIDENCE REQUIRED TO PROVE OFFENCE UNDER 489-D OF THE CODE-

To prove this offence evidence must be brought on record with the help of which it can be proved that machinery which is used to print fake currency was bought, sold or manufactured by the accused himself or kept in possession by himself.

Things required for improvements in investigation-

(1) The above said offences can be proved only when the evidence of the expert is brought on record that the recovered currency is fake currency. The report of the Nasik Press must be obtained because it is the only recognised organization which is capable of giving opinion regarding fake currency. The investigating officer normally obtains the opinion of the bank official or from the branch of the RBI regarding fake currency, which is not acceptable at all and that is why the accused get acquitted.

(2) Many times fake currency is recovered from the house or shop of the accused and at the time of recovery the accused is absent. In these cases it is required to be proved that the fake currency belongs to the accused. First of all it has to be proved that the accused is the owner or tenant of that shop or house. Many
times the Investigating officer does not bring this evidence on record and the accused can prove that he has no link with fake currency.

(3) If the investigating officer receives information that accused has kept in his possession or using fake currency then after registration of the case a police officer in civil dress must be sent to the accused for buying fake currency from the accused by which evidence can be brought on record to prove offence under section 489 B of I.P.C

2.11 CONCLUSION

The forgoing discussion makes it clear that due to the advancement of science and technology newer form of criminality known as white collar crime has arisen. The concept of white collar crime was introduced in the field of ‘Criminology’ by Edwin H. Sutherland in 1939. The Indian Penal Code was enacted in 1860. The word white collar crime is not mentioned anywhere in the Code. But the dimensions of white collar crimes are so wide that after analyzing the provisions of Indian Penal Code 1860 we may conclude that certain offences under Indian Penal Code are closely linked with white collar crimes such as corruption, bribery, counterfeiting of coins and government stamps, offences relating to weights and measures, adulteration of food stuffs and drugs, misappropriation of property, criminal breach of trust, cheating and dishonesty inducing delivery of property, forgery, etc. After analyzing relevant provisions we may conclude that even though Indian Penal Code was enacted in 1860 and though it has been amended here and there but its main structure has continued intact during the last 154 years. It is an admirable compilation of substantive criminal law and most of its provisions are as suitable today as they were when they were formulated. But the social and economic structure of India has changed to such a large extent that in many respects the Code does not truly fulfills the needs of the present day. It is dominated by the nation that almost all major crimes consist of offences against person, property or State. However the Penal Code does not deal in any satisfactory manner with acts which may be described as white collar crimes having regard to the special circumstances under which they are committed and which have now become dominant feature of certain powerful sections of modern society. The
punishment prescribed for white collar crimes under Indian Penal Code, 1860 are proving inadequate. The specific Acts dealing with white collar crimes and the provisions of Indian Penal Code should be harmoniously interpreted to control the problem of white collar crimes. The provisions of Indian Penal Code dealing with white collar crimes should be amended to enhance punishment particularly fine in tune with changed socio-economic conditions.