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White Collar Crimes (Privileged Class Deviance)

Q1. Define White Collar Crimes in India and Differentiate with Traditional Crimes.

Introduction

This research article analyzes a critical study on white collar crime in India. And to understand the concept of white collar crime in India. White collar crime basically means the crime committed by the educated people belonging to a higher class of society during the course of their occupation. In this paper, the author has discussed about what differentiates white collar crime from the blue or ordinary crimes. It can also be called as the crime of educated and professional elites. In this article the author has further discussed the common types of white collar crimes evolved in India from last few years. And how this has become a socio-economic crime. Besides this there are crimes which are involved in different profession i.e. in medical, education and legal profession. The paper highlights various legislations of Indian laws which talks about the punishment of these type of crimes. The author will finally conclude the article with his own suggestions.

White collar crime is a crime committed by the people who belong to the higher class of society and are from the reputable group of society. This crime is committed during the course of their occupation. The people who are committing this crime have usually a better understanding of technology, their respective field, disciplines etc. White collar crimes are largely evolved from few years. And they are seen to be committed in large organizations that cover a large number of activities. So we can say that these crimes are common to trade, commerce, education, health etc. As the criminal profile has changed a lot in few years the traditional crimes have partially switched by the white collar crimes in the country. The primary difference between the white and the blue crime is that the ordinary i.e. the criminals of blue crime are people of under-privileged section and upper class is involved in white collar crime and they commit the crime in a very organized manner. They maintain their respect in the society until the crime is discovered.

Historical Background:

- Edwin Sutherland an American sociologist who first defined the white collar crimes in the global. He described this crime to be committed by the person of high social status as compared to those who commit ordinary crimes during the course of his employment.

- In 1934, Again Morris drew attention to the necessity of a change in emphasis regarding crime. He arrested that anti-Social activities of persons of high status committed in course of their profession must be brought with the category of crime and should be made punishable.

- Finally, E.H. Sutherland through his pioneering Work emphasized that these ' Upper Worked1 crimes which are committed by the persons of upper Socio-economic groups in course of their occupation - violating the trust , Should be termed as "White Collar Crime". So as to be distinguished from traditional crime which he called "Blue Collar Crime".

- And the concept of White Collar Crimes found its place in criminology for the first time in 1941.

White Collar and Blue Collar Crime: Differentiation

- The criminals of white collar crime are relatively more intelligent, smart and successful men of the higher class than the ordinary criminals.

- These crimes are difficult to detect and not at all personal. And on the other hand, the ordinary crimes are direct and are very personal. They also involve violent methods such as using force to commit crime.

- The ordinary criminals are usually afraid of the law agencies after committing the crime but the white collar criminals are not at all afraid of the law agencies because of the fact that if they got detected they will be fined or transferred or the maximum that they will get a short-term imprisonment.

- Another difference between blue and the white collar crime is that the economic loss of white collar crime is thousands time higher than that of the ordinary crimes. The financial loss which the society

has to bear is higher in white collar crimes than the crimes committed by the people of low-social standard.

- White collar crime committed out of greed and it is very well planned and executed on the other hand blue crimes are usually committed out of rage, revenge and other emotions. In white collar crime harm is caused to the casualties or cash but harm is physical in case of blue collar crime.

How White Collar Crimes Affects More Than Just The Criminals:

White collar crime can have a large impact on the society and it does not only affect the criminals. It is also called as a socio-economic crime because it has a direct impact on the society. When a white collar crime is committed huge losses on business occur which have a direct impact on the consumers and the society. There are various numbers of frauds and scams that had been exposed in our country from the past few years like 2g scam, havala scam, banking scam, fodder scam and many more. Due to these frauds and scams the economy of our country has shambled. And then to make up these losses of fraud or any scams, they increase the costs. This means higher prices for the consumers in the way of higher taxes, government revenue, and increased insurance costs. The impact of white collar crime on society is great. There is loss in every field from the costs of commodities to the securities and insurance. One financial fraud can affect the businessmen, the investors and the government. All you need is one bad employee who out of greed of money will commit a financial fraud and will cause harm to the reputation of the company, lack of profits and gain of losses.

Common Types of White Collar Crime In India:

1) Bank Fraud Fraud is a crime committed with an intention to deceive and gain undue advantage. Bank Fraud is a fraud committed on the banks. It is committed by the fraudulent companies by making fake representations. It is also related to the manipulation of the negotiable instruments like cheque bouncing, securities, bank deposits etc. Bank fraud is concerned to the public at large because there is a relation of trust between the banks and the public. It is the most common type of white collar crime and also a corporate crime. It harms public as well as the government of the country.

2) Bribery: Bribery is also a very common type of white collar crime. By bribery we means giving money or some goods to the person at a high position in return of a favor. In simple words bribery is when one man gives money to the other which is in authority. It is done for the purpose of insisting him to do something or to prevent him from doing something. It is the most common income of most of the public officials of our country.

3) Cybercrime: Cybercrime is the biggest cause leading to these type of crime in India. It is the latest problem prevailing in the cyber world. Cybercrime is the crime which is related to 'computer networks'. With the rapid increase of advancement of technology there is also a rapid increase in the crime related to the technology. Cybercrime involves the persons who are expert in computer related technology. And it is committed against the victim directly or indirectly to cause a harm to his reputation or to harm in physical or mental way using internet, networks and other technological sources.

Cybercrime threatens the nations as well as the person's security and financial status. Cybercrime can cause huge financial loss to the country. Not only the financial loss but it can also threaten the privacy of a person. Disclosure of confidential information can create privacy problems. Also cybercrime against women is also rising. By the use of telecommunication networks, mobile phones cyber stalking, sending obscene messages and pictures by criminals to women is also increasing.

- Hacking,
- Child pornography,
- Copyright infringement,
- Cyber terrorism,
- Cyber stalking are some of common examples of cybercrime.

4) Money Laundering: Money laundering is a crime in which the criminals disguise the identity of the money. In this crime, criminals try to hide the original ownership of the money and the place where they obtained that money by illegal means. Laundering is done with the intention of making that money came from legal sources. In simple words money laundering means to show the illegitimate money as legal money. For instance if a person obtain money from black marketing, trafficking of illegal goods the money will be considered 'dirty' and he cannot deposit into the banks as it may seem suspicious if he directly deposit money into the financial institutions because he had to create statements and records stating that where the money came from. Money laundering involves three steps:

- Firstly, the owner of the money obtain the money from some illegal means and deposit into the bank by some way.
- Then through multiple transactions the transfer of money is being done.
- Lastly, they return the money into banks to make it legitimate.

5) Tax Evasion: Tax evasion is committed with an intention to conceal one's actual taxable income and one's original position to the authorities. This concealment of income is done to reduce the tax liability in the eyes of government. In simple words it means to hide the money obtained from the illegal means in order to reduce one's liability to pay tax and to show low income to the tax authorities. Tax evasion has a negative impact on the social values as it demoralized honest tax payers and they might also want to do tax evasion also it gives economy power in the hand of few undeserving people.

6) Identity Theft: Identity theft is one of the easiest type of crime these days. Due to advancement of technology it is very easy to access personal information of anyone. Identity theft is the crime in which the criminal access unauthorized information such as name, address, phone number etc. and use this information to gain money. In simple words identity theft is committed by using some other person identity to commit fraud or to gain money by illegal means.

White Collar Crime In Different Professions:

1) In Medical And Health:

- Making of false medical certificates by the doctors.
- Fake and intended prolong the treatment in order to increases the bills.
- Sex discrimination of the child by the doctors on the compulsion of the patient to gain money.
- Delaying of time by doctors to increase the amount of money in the bills.
- Sale of sample medicines which are not allowed to the chemists.

2) In Legal Profession:

- Fabrication of forged documents.
- Threatening the witnesses of the other party.
- Violation of ethical standard of legal profession to gain money.

3) In Education:

Collecting huge sums of money in the name of donations by students in order to give them admission.

Merit based admission is replaced by donations.

Collect huge amount of money in the name of government grants.

Legislations against the White Collar Crime In India:

Government has made various legislation for identifying white collar crime. These legislation contains punishment regarding these crimes.

- Companies Act, 1960.
- Income Tax Act, 1961.
- Indian Penal Code, 1860.
- Commodities Act, 1955.
- Prevention of corruption Act, 1988.
- Negotiable Instrument Act,
- Prevention of money laundering Act, 2002.
- IT Act, 2005.
- Imports and Exports (Control) Act, 1950.

Conclusions and Suggestions:

White collar crimes are the crimes which cause a harm to the economy of the country as a whole. It threatens the country's economy by bank frauds, economic thefts, evasion of tax etc. It not only affects the financial status of a country or a person but It has also a negative impact on the society. The various crimes such as bribery, corruption, money laundering has affected society in a negative way.

- There is no proper definition of White collar crime in Indian laws. These socio-economic crimes should not be taken leniently by the government.
- Punishment regarding White collar crime should be stricter as harsh punishment can prevent these crimes to a great extent.
- If the crime is very heinous the punishment might also be extended to life imprisonment.
- People are not aware about most of these crimes so the public awareness through any communication medium is also necessary.
- Government should impose strict regulations regarding economic thefts of the country.

Q2. What is White Collar Crimes? Mention the types of White Collar Crimes.

Introduction

White Collar Crimes are the crimes committed by a person of high social status and respectability during the course of his occupation. It is a crime that is committed by salaried professional workers or persons in business and that usually involves a form of financial theft or fraud. The term "White Collar Crime" was defined by sociologist Edwin Sutherland in 1939. These crimes are non-violent crimes committed by business people through deceptive activities who are able to access large amounts of money for the purpose of financial gain.

White Collar Crimes are committed by people who are involved in otherwise, lawful businesses and covers a wide range of activities. The perpetrators hold respectable positions in the communities unless their crime is discovered. The laws relating to white-collar crimes depends upon the exact nature of the crime committed.

Types of White Collar Crimes

There are different types of white collar crimes. Some of them are as follows:

- **Bank Fraud:** Bank Fraud means to engage in such activities in order to defraud a bank or using illegal means to obtain assets held by financial institutions.
- **Blackmail:** Blackmail means demand for money by threatening some person to cause physical injury or exposing his secrets.
- **Bribery:** Bribery means offering money, goods or any gift to someone in order to have control over his actions. It is a crime whether someone offers or accepts a bribe.
- **Computer Fraud:** Computer frauds are such frauds which involve hacking or stealing information of some other person.
- **Embezzlement:** When someone entrusted with money or property uses it for his own use, it is embezzlement.
- **Extortion**: When a person illegally obtains someone's property by actual or threatened force.
- **Insider-Trading:** When someone uses the confidential information to trade in shares of publicly held corporations.
- **Money-Laundering:** Money Laundering means the concealment of origin of illegally obtained money.

- **Tax fraud:** Tax fraud means evading tax by providing wrong information in tax forms or illegally transferring property in order to avoid tax.

White Collar Crime is pervasive in almost all the professions and occupations in the society. These crimes are common to the business world and Indian trade and violation of Foreign Exchange Regulation Act and export and import laws are resorted to make huge profits.

Causes of White-Collar Crime

The general perception is that the white collar crimes are committed because of greed or economic instability. But these crimes are also committed because of situational pressure or the inherent characteristic of getting more than others. However, there are various reasons for white collar crimes.

- **Not really a crime:** Some offenders convince themselves that the actions performed by them are not crimes as the acts involved does not resemble street crimes.
- **Not realizable:** Some people justify themselves in committing crimes as they feel that the government regulations do not understand the practical problems of competing in the free enterprise system.
- **Lack of awareness:** One of the main reason of white collar crime is the lack of awareness of people. The nature of the crime is different from the traditional crimes and people rarely understand it though they are the worst victims of crime.
- **Greed:** Greed is another motivation of the commission of crime. Some people think that others are also violating the laws and so it is not bad if they will do the same.
- **Necessity:** Necessity is another factor of committing crimes. People commit white collar crimes in order to satisfy their ego or support their family.

White Collar Crimes in India

White Collar Crimes are rapidly increasing in our country with the advancement of commerce and technology. The recent developments in the technology have given new dimensions to computer related crimes known as cybercrimes. As such, the white collar crimes are increasing with the development of new websites. The areas affected by these crimes are banking and financial institutions, industry, business etc.

Thus crime is an act or omission which constitutes an offence and is punishable under the law. As the white collar crimes are increasing on daily basis, it injures the society on a large scale because the laws are not properly administered and therefore there is a need to curb the factors that are helping in the commission of such crimes.

Laws relating to White Collar Crimes

The government of India has introduced various regulatory legislations, the breach of which will amount to white-collar criminality. Some of these legislations are Essential Commodities Act 1955, the Industrial (Development and Regulation) Act, 1951.,The Import and Exports (Control) Act, 1947, the Foreign Exchange (Regulation) Act, 1974, Companies Act, 1956, Prevention of Money Laundering Act, 2002.

The Indian Penal Code contains provisions to check crimes such as Bank Fraud, Insurance fraud, credit card fraud etc. In case of money laundering several steps have been taken by the government of India to tackle this problem. The Reserve Bank of India has issued directions to be strictly followed by the banks under KYC (Know Your Customer) guidelines. The banks and financial institutions are required to maintain the records of transactions for a period of ten years.

In order to tackle with computer-related crimes, Information Technology Act, 2000 has been enacted to provide legal recognition to the authentication of information exchanged in respect of commercial transactions.

Section 43 and 44 of Information Technology Act prescribes the penalty for the following offences:

- Unauthorized copying of an extract from any data.
- Unauthorized access and downloading files.
- Introduction of viruses or malicious programmes.
- Damage to computer system or computer network.
- Denial of access to an authorized person to a computer system.
- Providing assistance to any person to facilitate unauthorized access to a computer.

Though the focus of Information Technology Act is not on cybercrime as such, this Act has certain provisions that deal with white collar crimes. Chapter XI deals with the offence of cybercrime and chapter IX deals with

penalties and adjudication of crime. Apart from this, many issues are unresolved due to lack of focus. Some of them are:

- Inapplicability
- Qualification for appointment as adjudicating officer not prescribed
- Definition of hacking
- No steps to curb internet piracy
- Lack of international cooperation
- Power of police to enter and search limited to public places
- Absence of guidelines for investigation of cyber crime

There are some measures to deal with white-collar crimes. Some of them are, creating public awareness of crimes through media or press and other audio-visual aids and legal literacy programmes. Special tribunals should be constituted with power to sentence the offenders for at least 5 years and conviction should result in heavy fines rather than arrest and detention of criminals. Unless the people will strongly detest such crimes, it is not possible to control this growing menace.

Conclusion

It is clear that due to advancement of science and technology newer form of criminality known as white-collar crime has arisen. The term "white-collar crime" has not been defined in the code. But the dimensions of white-collar crime are so wide that after analyzing the provisions of Indian Penal Code 1860, we may conclude that certain offence under Indian Penal Code is closely linked with white collar crimes such as bribery, corruption and adulteration of food, forgery etc. 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. The special 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.

Q3. Define Socio-Economic Offences in India and briefly explain the Legal Mechanism to combat Socio-Economic Offences.

INTRODUCTION

SOCIO-ECONOMIC OFFENCES are usually considered to be synonymous with white collar crimes but a deep study into the concept reveals that although there is an intersection between socio economic offences and white collar crimes, but the latter is narrower in scope. White Collar crimes are those which are committed by upper class of the society in the course of their occupation, for e.g., a big multinational corporation guilty of tax evasion. A pensioner submitting false return may not be committing a white collar crime but interestingly, both are socio economic offences. Social crimes are those which affect the health and material of the community and economic crimes are those which affect the country's economy and not merely the victim. Hence it can be safely assumed that socio economic offences are those which affects the country's economy as well the health and material of the society.

Before discussing the concept of socio economic offences elaborately, first it is needed to be stated that in India the Government had appointed certain committees to work on some specific offences, which offences are actually falling under the category of socio economic offences. In India, the Government of India for the purpose of reviewing the problem of corruption and for making suggestions regarding it had appointed a committee namely Santhanam Committee in the year of 1962,[1] which has suggested changes in the legal framework for the purpose of ensuring the speedy trial of the cases relating to bribery, corruption or the cases of criminal misconduct which can help in making the law more effective; the committee has suggested the changes after going through numerous cases in the light of the present social context and the social changes and the economic objectives, which actually helped in the growth of these types of offences. This Santhanam Committee while providing suggestions regarding the change in the legal framework, which is needed for the purpose of curbing the problem of corruption, has also dealt with the concept of the white collar crime and had attached a great importance towards it and accordingly the report had stated the scenario in which these evils evolved.

Later the 47th Law Commission Report laid down a new composite category of socio-economic crimes. The three basic forms include illegal economic activities,[2] illegal way of performing commercial and allied transactions[3] and evasion of public taxes or monetary liabilities.[4]

WHITE COLLAR CRIME VIS A VIS SOCIO ECONOMIC OFFENCES

While discussing Socio economic offences it is necessary to discuss the concept of white collar crime in the beginning, as it is necessary to understand the concept of white collar crime before going to the details of

[1] *http://lawcommissionofindia.nic.in/*1-50/Report29.pdf . (last visited on 10th May 2018).
[2] Black marketing, food and drug adulteration, smuggling, bootlegging, gambling and Prostitution.
[3] Illegal gain from real estate deals. Bribery, kickbacks/cuts, violation of foreign exchange regulations.
[4] Income tax, excise, sales and customs evasion.

socio economic offences. The occurrence of white collar crime is very common now-a-days. If men or women is asked that whether they have heard about white collar crime, most of them will say that they have heard about this term and by this term they think about the stealing of money by persons of high status, who despite their stealing do not go to the jail. Though, the concept of white collar crime is not that simple. It actually involves many social, economic and legal issues, the issues having great impact in the society.[5]

If the history can be traced back thoroughly then in the earlier portion of twentieth century, it can be found that, one of the eminent American sociologist, namely E. A. Ross had raised his voice against business duplicities and had mentioned that there are some powerful business owners and also some members of executive who have a tendency to exploit people and they do it and they also manipulate marketplace to fulfil their uninhibited desire regarding maximization of their profits, but while doing so, they pretend that they are pious and respectable.

The term "white collar crime" came into the picture when eminent criminologist Edwin H. Sutherland first coined it, it can be said that Sutherland had worked upon the concept of white collar crime thorough out his career, but it is also a fact that from his works it can be found that he has not given only one definition of white collar crime, rather he had used several definitions of white collar crime in his works, but the definition which is there in his book namely "White collar Crime" is one of the most famous one, where he has defined the concept of white collar crime as being a crime which is committed by such a person who is having a high social status and also having respectability which is acquired by him in the course of the occupation, in this definition he also has noted that under this definition many of the crimes which are committed by the upper class is excluded, such as, murder, intoxication and adultery are excluded though committed by the persons of upper class as these crimes are not customarily becomes a part of the occupational procedures of these persons belonging to the upper class and in the footnote he had also mentioned that the term white collar crime has been used for the purpose of referring principally to the managers of business and to the members of the executive.[6] Besides, Sutherland had not only defined the term white collar crime, he had also given his opinion that the criminals who are committing these white collar crimes should be differentiated as there are differences between the persons belonging to the lower socio-economic status who are committing crimes by violating the regular penal code or violating the special trade regulations which are applicable to them or the persons who are belonging to high social economic status and violating the provisions of the regular penal code in such ways which are not connected with their occupation and the persons who are committing white collar crimes. Sutherland's definition of white-collar crime, is therefore built upon three overlapping types of,

[5] BENSON & SIMPSON, "*WHITE COLLAR CRIME, AN OPPORTUNITY PERSPECTIVE*", 1, (2009).
[6] SUTHERLAND, "*WHITE-COLLAR CRIME*", 9, (1949).

misbehaviours (crimes). (1) Any crime committed by a person of high status (whether or not it is done in the course of their occupational activities). (2) Those crimes committed on behalf of organizations (by people of any status). (3) Those crimes committed against organizations (whether or not these are carried out by people working in the same organization, another organization, or none at all).

After discussing the concept of white collar crime, the concept of socio economic offences is needed to be discussed. In this context first, the concept of socio economic offences given by the 47th Law Commission Report in India is very important and needed to be discussed as in this report the salient features of these social and economic offences are discussed in a detailed manner. It could therefore, be submitted that socio-economic offences does not only extend the scope of the subject matter of white-collar crime, as conceived by Sutherland and as appreciated by others[7] , but is also of wider import.

According to the above mentioned Law Commission Report, there are salient features of social and economic offences,[8] firstly, in these type of offences the particular motive of the criminal is not lust or hate rather the motive is avarice, secondly, if the background of these types of offences can be seen then it can be understood that the background is non-emotional which is not the same in cases of murder, rape etc. if compared with these types of offences, as in the cases of social and economic offences, generally there is no existence of any emotional reaction between the offender and victim, thirdly, usually in these types of offences the victim is a large portion of the public, especially the consuming public and though even if there is no harm to any particular person, but the harm is caused to the society which have a very large impact upon the society, fourthly, the mode of these type of offences is fraud generally and not force, fifthly, the act which results in commission of these type of offences is generally a deliberate and wilful act, sixthly, the interest which needed to be protected if there is commission of these type of offences are two-fold, as social interest is protected while preserving the property or health or the wealth of the individual members and while preserving the whole economic system of a country and also protecting the social interest which is in the augmentation of wealth of the whole country.

If the historical development of these socio economic offences in India can be traced, it can be found that after the World War, there is scarcity of essential things and which resulted in increasing demand of such things and avarice was breeding among the businessmen, and there was a development regarding these types of offences, then after the freedom and Partition of India, for lack of good legal and administration control this problem increased and after the urbanization took place, these offences became rampant in India and the Govt. started to recognize these problems and appointed different committees to investigate the matter and tried to

[7] HAZEL CROAK, "*UNDERSTANDING WHITE COLLAR CRIME"*, 11-12(2001)
[8] Law Commission Report, 47, 2

control the situation by implementing some measures as can be found from the reports of these committees. It is clear from the above discussion that these offences are different if compared to the other offences. The two distinguishing features of these offences are the gravity of these offences having a strong adverse impact in the society and thereby causing a great harm to the society as a whole, and the nature of these offences are also peculiar if compared to the other offences as these offences are done in a planned way and it is done in secrecy in a sophisticated manner by some shrewd persons only for the purpose of their profit.

So, from the above discussion it is clear that this particular type of offences actually not only cause harm to the public welfare, but also harms the nation's welfare as a whole.

Different Types of Socio Economic Offences

In 29th report some categories are mentioned which are dealt with in the report. They are discussed in a brief manner here under for the sake of understanding the concepts of different types of social and economic offences in India.

As per the report, the offences which actually prevent the economic development of the country and thereby consequently creates danger for the economic health of a country comes under the first category, in second category there are offences of evasion of tax, in third category there are the offences related to misuse of the position by the public servants, under fourth category the offences which is similar to the nature of breaches of the contracts which consequently results in delivery of such goods which are not accordingly falling under the specifications are included, in the fifth category the offences relating to hoarding as well as black marketing comes, the sixth category mentions about the offences relating to adulteration of foods as well as drugs, in the seventh category the offences of theft and the misappropriation in relation to public property and funds are included, in the eighth and the last category comes the offences related to trafficking in the sector of licenses as well as permits etc.

LEGAL CONTROL MECHANISM IN INDIA TO COMBAT SOCIO ECONOMIC OFFENCES

The survey includes an analysis of the case-laws having socio-economic ramifications. The cases pertains to offences under socio-economic legislations in India, namely, Essential Commodities Act 1955, Prevention of Black-marketing and Maintenance of supplies of essential commodities Act 1980, Food Safety and Standards Act 2006, Prevention of corruption Act 1988, Narcotic and Psychotropic substances Act 1985, Foreign Exchange Regulation Act, 1973 and Foreign Exchange Management Act, 1999, Income-Tax Act, 1961, Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (COFEPOSA), Drugs

and Cosmetics Act 1940, Dowry Prohibition Act, 1961, and Immoral Traffic Prevention Act, 1956. Some of them are discussed below:

ESSENTIAL COMMODITIES ACT AND PREVENTION OF BLACK MARKETING AND MAINTENANCE OF SUPPLIES OF ESSENTIAL COMMODITIES

The Essential Commodities Act, 19556 entails to an era of food scarcity and when secured food supply was considered to be a government responsibility. The main aim of the Act is to provide food supply to the consumers and to protect them from the exploitation of unscrupulous traders. One of the major problems with regard to essential commodities was its hoarding and black marketing. In order to curb it, the Prevention of Black Marketing and Maintenance of Supplies of Essential Commodities Act, 1980 (hereinafter PBMSEC Act, 1980) was enacted to provide for detention in certain cases or the purpose of prevention of black marketing and maintenance of supplies of commodities essential to the community.

PUBLIC DISTRIBUTION SCHEME

In *PUCL (PDS Matters) v. Union of India*,[9] a writ petition was filed in the Supreme Court primarily aiming at the reforms of the PDS (Public Distribution Scheme). The main contention of the petitioners was that in spite of large availability of food grains in the country and in spite of subsidies meant for food grains distribution among poorer section of the society, there is large scale misappropriation and wastage of food grains. The court in this case focused on Wadhwa J CVC report. The report mentioned that PDS which is the largest food distribution network in the world suffers due to corruption. The Supreme Court called upon CVC to sum up its final recommendations at the national as well as the state level and directed it to give short/immediate measures and long term objectives to be taken up by state/central government. The long term objectives were primarily to set up civil supplies corporation and for computerization of PDS operations. The report held that it becomes important that a civil supplies corporation in the state is constituted to work as an independent body to distribute PDS food grains at Fair Price Shop (FPS) level and take over existing FPS. The report also held that computerization is the only way to prevent diversion of PDS food grains.

The short term recommendations included identification of beneficiaries inclusion and exclusion errors; proper infrastructure development by Food Corporation of India (FCI) and states for storage of food grains; as far as possible there should be no intermediate storage by corporations after lifting of the stock from the FCI godown. The civil supplies corporation or the department where corporation is not formed should lift the stock from FCI godown. The other short term recommendations include increasing viability of FPS; accountability and monitoring should be increased by developing a 'transparency portal'; allocation of PDS on unit basis and

[9] (2013) 2 SCC 663.

constitution of vigilant committees to monitor the distribution of food grains. The report also contained several other recommendations but the most important was to have an effective complaint mechanism and enforcement system. It is mentioned that there should be zero tolerance towards matters of enforcement of provisions of EC Act, 1955 and PBMSEC Act, 1980. There are certain areas in the country where residents depend entirely on PDS food grains and hence proper supply is needed. Hence PBMSEC Act, 1980 should be invoked when there is a threat to disrupt the supply of PDS food grains. In another case *Ranjit Kr v. State of Bihar*,[10] the petitioner was accused of violating section 6A10 of the EC Act, 1955 as his tractor-trailer contained rice and wheat in sacks having the FCI marks and the driver on being asked about papers ran away. It was held that merely because the food grains were found in sacks bearing FCI marks cannot be a ground of violating any statutory order. Usually, once the food grains are sold by the PDS dealers they sell the sacks to the agriculturists and in the absence of any finding on violation of any statutory order, the court held the confiscation cannot be sustained. It was thoughtful of the court as innocent people could have been wrongly incriminated in such matters.

Cognizance of matter under section 11 EC Act, 1955 only on report written by public servant

In the case of *Abdul Rashid v. State of Haryana*,[11] the accused were found in illegal possession of kerosene. In order to attract the provision of section 712 of the EC Act, 1955 it has to be proved that the appellant was a dealer appointed under PDS, or was dealing with business of kerosene as a dealer. The petitioner and the person driving (deceased) were found with kerosene drums but it could not be revealed whether they were dealers or when as how they were planning to sell them. It was also held that if an offence was put under section 11 of the Act, the court shall take cognizance only when the report is written by a public servant.

FOOD SAFETY AND STANDARDS ACT, 2006

The objective of the food law is to make available safe, pure, wholesome and nutritious food to the public. The said Act consolidates all the previously existing laws relating to food and establishes the Food Safety and Standards Authority of India (FSSAI) for laying down science based standards for articles of food and to regulate their manufacture, storage, distribution, sale and import, to ensure availability of safe and wholesome food for human consumption.14 It also provides for penalty in case the food standards are not in conformity with the provisions of the Act and also brings within its penal ambit any act which deceives the consumer with regard to food items.

ADULTERATION IN MILK AND SOFT-DRINKS

[10] AIR 2014 Pat 14.
[11] 2014 Cri LJ 1588.

In Swami *Achyutanand Tirth v. Union of India*,[12] a group of citizens led by Swami Achyutanand Tirth of Uttarakhand filed a writ position against preparation of synthetic and adulterated milk and milk products using urea, detergent, refined oil, caustic soda, white paint etc., which according to studies are hazardous to health and can even lead to cancer. The PIL sought framing of a comprehensive policy on the production, supply and safety of healthy, hygienic and natural milk. The Supreme Court in the judgment dated 05.12.02013 showed concern about adulteration of milk and its hazardous effect on public health. The court held that in cases of this kind, even though prosecution has been launched, the maximum punishment is six months imprisonment. States like Uttar Pradesh, West Bengal and Odisha taking note of the seriousness of the offence has increased the penalty under section 272 IPC, 1860 wherein adulteration of food is treated to imprisonment for life and also fine. The court in the order also directed various states to file affidavit of the number of cases they have booked wherein synthetic material have been added to milk. They were also asked to give details of inspection results, especially during festival season like Diwali and Dussehra.

PREVENTION OF CORRUPTION ACT, 1988

Corruption is considered to be one of the worst socio economic crimes and is the greatest impediments on the way towards progress for developing country like India. It was enacted to combat corruption in government agencies and public sector businesses in India. One of the important step in this regard was the enlarging scope of the definition of the expression 'Public Servant'.

Approval from Central Government is not necessary to investigate senior government officers/public servants when enquiry/investigation is monitored by constitutional courts

In the case of *Manohar Lal Sharma v. Principal Secy*,[13] the Central Bureau of Investigation (CBI) has registered preliminary enquiries (PEs) against unknown public servants, inter alia, of the offences under the Prevention of Corruption Act, 1988 (PC Act,1988) relating to allocation of coal blocks for the period from 1993 to 2005 and 2006 to 2009. One of the important question which was considered in this impugned order was whether the approval of the Central Government is necessary under section 6A of the Delhi Special Police Establishment Act, 1946 (DSPE Act) in a matter where the inquiry/investigation into the crime under the PC Act,1988 is being monitored by the court. There is no doubt that the objective behind the enactment of section 6A is to ensure that those, who are in decision making positions, are not subjected to frivolous complaints and make available some screening mechanism for frivolous complaints. In this case the court held the filtration mechanism is achieved as the constitutional court that monitors the inquiry/investigation by CBI

[12] 2013(5) SCALE 23.
[13] 2013 (15) SCALE 305.

acts as guardian and protector of the rights of the individual and, if necessary, can always prevent any improper act by the CBI against senior officers in the Central Government when brought before it. The court per curiam held that approval under section 6A from Central Government is not necessary to investigate senior government officers/public servants when enquiry/investigation is monitored by constitutional courts.

Conditions on grant of bail in economic offences

In *Y.S. Jagan Mohan Reddy v. CBI*,[14] the petitioner adopted several ingenious ways to amass illegal wealth which resulted in great public injury. The only question posed for consideration is whether the appellant-herein made out a case for bail. The Supreme Court held that economic offences constitute a class apart and hence a different approach has to be taken in matters of bail. The economic offence having deep rooted conspiracies and involving huge loss of public funds needs to be viewed seriously and considered as grave offences affecting the economy of the country as a whole and thereby posing a serious threat to the financial health of the country. The court held that while granting bail, the court has to keep in mind the nature of accusations, the nature of evidence in support thereof, the severity of the punishment which conviction will entail, the character of the accused, circumstances which are peculiar to the accused, reasonable possibility of securing the presence of the accused at the trial, reasonable apprehension of the witnesses being tampered with, the larger interests of the public/state and other similar considerations. The court rejected the bail as it felt that it may hamper the investigation.

Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS)

Although Narcotic Drugs and Psychotropic Substances have several medical and scientific uses, they can also be abused and trafficked. The Narcotic Drugs and Psychotropic Substances (NDPS) Act, 1985 was framed taking into account India's obligations under the UN drug Conventions as well as article 47 of the Constitution which mandates that the 'State shall endeavour to bring about prohibition of the consumption except for medicinal purposes of intoxicating drinks and of drugs which are injurious to health'. This Act prohibits, except for medical or scientific purposes, the manufacture, production, trade, use, etc. of narcotic drugs and psychotropic substances.

In *Ashok Kumar Sharma v. State of Rajasthan*[15], the appellant was charged under section 15 of the NDPS Act, 1985 and was convicted. The important question before the court is that whether officer acting under section 50 of the NDPS Act is legally obliged to apprise the accused of his rights to be searched before a gazetted officer or magistrate. The court very reasonable held that although ignorance of law is not an excuse but it

[14] (2013) 7 SCC 439.
[15] (2013) 2 SCC 67.

cannot be imputed to every person, eg., a rustic villager, a poor man in the street. It is the duty of the officer to inform the suspects of his right under section 50 of the NDPS Act, 1985. The court set aside the conviction.

The accused was held guilty under section 8 and section 18 of NDPS Act, 1985 in *State of Rajasthan v. Bheru Lal*.[16] The accused on the date of the incident was found carrying three kilograms of opium by one police-officer who was temporary in charge, SHO, of the local police station. He was later convicted at the trial court. At the high court, he was acquitted because the police officer who conducted the search, seizure and arrest was not the SHO. The Supreme Court

held that although he was not the SHO but was given temporary charge as SHO. He relied on reliable sources and complied with necessary requirements and proceeded to the spot to trap the accused. Any delay would have allowed the accused to escape, and hence there is no justification to place unnecessary importance on the term 'posted'. The Supreme Court set aside the high court decision and the judgment of the trial court was restored.

CONCLUSION

There are some problems relating to these types of offences, which are generally found while dealing with these types of problems. One of the problem is in these types of offences sometimes it is difficult to decide that who will be responsible while the offence is done at the decision making level of the firms, because in many cases it can be seen that decision making is fragmented and not there in the hands of a single person, besides, the persons who are making the decision can practice some concerted ignorance so that they can shield themselves from the criminal liability. Besides, as it can be found from the legislations which are trying to deal with these types of offences in India, they are regulatory in nature in many cases and therefore, it is for control and for monitoring regarding the behaviour of different institutions and as they are regulatory in nature in most of the situations, the control has a tendency to become more persuasive in nature rather than becoming more punitive in nature, which is needed to control the situation for example, the provision of recall of products as existing in the legislations dealing with the food adulteration.

While concluding it can be stated that in India, there are several problems of poverty, ill nourishment as well as exploitation which are coming in the way of economic development of this country, apart from these, if these offences continue to harm the economic development of the country, then India will not be able to develop as a whole. So, by some stringent action in the part of the Govt. and by initiative of the people of India these problems of socio economic offences can be cured to a great extent.

[16] (2013) 11 SCC 730.

Q4. Briefly explain the underlying policy of Prevention of Corruption Act, 1988

Meaning of Corruption

The term 'Corruption' is derived from the Latin word "corrupts" meaning "corrupted". Corruption refers to dishonest or deceitful behaviour on account of the persons possessing power including government officials or other managers. Corruption certainly includes either giving or accepting inappropriate gifts and bribes, under table payments, money laundering, and black money, tampering elections and cheating the investors. India is considered to be one of the nations with high corruption. After the 2G spectrum case and commonwealth games scam held in 2010, the Parliament decided to amend this Act. The major reasons behind individuals indulging in corruption so frequently are their desire for illegal gains, greed for money and prevention of furtherance of any offence. It is observed that the illegal gains precisely called the black money are further deposited in Swiss banks or World Bank to earn more black money.

THE PREVENTION OF CORRUPTION ACT, 1988:-

The Prevention of Corruption Act came into force on 9 September 1988 by the parliament of India. The territorial extent of the Prevention of Corruption Act extends to whole India including the citizens of India outside India. Parliament made this action to remove corruption in government agencies and public sector businesses in India. For almost 25 years no amendment was made in this act. The objective of the Prevention of Corruption Act is to reduce the corruption in India in various government agencies and public sector businesses by combating against them. However, it is not only limited to taking measures to prevent corruption in government departments but also involves prosecuting and punishing the public servants involved in activities of corruption. In addition, the act also takes into consideration the persons who helped the offenders in committing the offence of either bribery or corruption.

The prevention of corruption act, 1988 is the act of parliament of India. This act contains 31 sections and 5 chapters. This act was enacted by the parliament of India. It applies in the whole India. Indian penal code was brought into force from 1-1-1862 though it received the assent of the governor-general of India on 6-10-1860. Indian Penal code chapter IX deals with all offences by or relating to public servants. This chapter does not deal with misconduct and abuse of power by public servants. Section 161 to 165 of IPC deals with offences relating to corruption committed by the public servant. Then a special act that is the prevention of corruption act came into existence. Then the public servant act, 1947 was expanded in 1988 to clearly define all terms including public servant and making the definition of various offences very clear. On 26 July 2018, the narrow definition of criminal misconduct came into force. With the help of IPC and act f 1947 and 1988, the Parliament of India decided to amend the act with new provisions. For almost 25 years no amendment was

made in this act and was further amended in 2018 by the parliament of India. The important reason for the amendment was tightening up the existing provisions in the act and expanding the coverage of the offences.

SALIENT FEATURES OF THE PREVENTION OF CORRUPTION ACT:-

These are the following salient features of prevention of corruption act:-

Bribery:-

Bribery is explained U/S 171B IPC. Bribery means a person gives a gratification to any person with the object of inducing him or any person with the object of inducing him or any other person to exercise any electoral rights or of rewarding any person for having exercised any such rights. Both the person bribe giver and bribe taker have been made responsible for the offence. A person who commits this offence shall be punished with imprisonment for a term of 7 years.

Criminal misconduct:-

As defined under section 13 under the Act, Criminal misconduct means misappropriation of entrusted property.

Prosecution sanction:-

Sanction U/S 19(1) is needed for prosecution for offenses under the act for all serving or retired officials.

The time limit of cases:-

The courts have a complete trial of offences within two years. After recording reasons for the same, the court could extend this duration six months at a time up to a maximum of four years.

Commercial organization:-

The Act prescribes punishment of both directors as well the employees working in the commercial organizations by levying fine on the directors and employees indulged in bribery. They shall be punished with both imprisonment and fine.

CRIMES PUNISHABLE BY THE PREVENTION OF CORRUPTION ACT

In cases where a public servant either accepts money or gifts in their official duty besides earning their salary in return for a favour from any individual.

Any individual aiding the public servant in committing the offence.

In cases where an individual gives or accepts gifts for influencing the public servant through his personal connection, illegal methods, corrupt methods, then such person influencing will also be punished.

In cases where the public servant is in charge of committing criminal misconduct.

In cases where the public servant indulges in accepting bribes or does corruption with the one having business relation or official relationship.

KEY HIGHLIGHTS OF THE PREVENTION OF CORRUPTION ACT:-

These are the following highlights of this act:-

Section 2 (d):-

The "undue advantage" means any gratification, other than legal remuneration. Gratification is not limited. Legal remuneration is permitted by a government organization and all the permissible to be received by the public servants. Public servants mean who are appointed by the government or not, who are in the actual possession of the situation. This implies that even non-pecuniary or non-monetary considerations such as gifts and favors not estimable in terms of money are also covered under "undue advantage".

Section 3:- Appointment of Special Judges

The Central and the State Government is empowered to appoint Special Judges by placing a notification in the Official Gazette.

Section 4 (4):-

This section provides two a time limit of two years to complete a trial of the cases under the act. If the special judge is not able to complete the trial within 2 years; he has to record the reasons in writing and extend the completion period by six months. Such six-monthly extensions with reasons recorded in writing can extend the total trial period to the maximum limit of 4 years.

Section 5:- Section 5 of the Act prescribes procedure and powers of Special Judge prescribed by the Cr.P.C. for the trial of warrant cases by the Magistrate.

Section 7:-

A public servant who obtains the undue advantage as a reward for the improper or dishonest performance of public duty. Public servants are defined as those persons who are appointed by the government. This section explains about the dishonest or improper performance of a public servant for illegal gains for money. In this offence the person shall be punished with an imprisonment of 3 years which can be extended to 7 years and fine.

Section 8:-

Any person who promises to give undue advantages to another person as a motive or reward to induce a public servant for improper performance of public duty. If a commercial organization has committed such offence, such organization shall be punished with a fine. The undue advantage could be given directly or by the help of the third party. The bribe taker shall be punished with imprisonment of a term of 7 years and fine.

Section 9:-

Bribing a public servant by a commercial organization: If a person is said to give promises to give undue advantage to a public servant if he has alleged to have committed an offence U/S 8 irrespective of whether or not he has been prosecuted for such offence. Any person who is associated with the commercial organization gives promises to give undue advantage to a public servant to retain the business of the commercial organization.

Section 12:-

Abetment of offences: If a person abets other people and commits the offence under this act, they shall be punished with an imprisonment of 3 years which can be extended to 7 years and fine.

Section 13(1):-

Criminal misconduct by a public servant: A public servant is said to commit the offence of criminal misconduct. If the person dishonestly or fraudulently misappropriates or otherwise converts for his use of any property entrusted to him or any property under his control as a public servant or allows any person to do so. The person shall be punished with imprisonment of term 5 years which may extend to 10 years and fine.

Section 14:-

Punishment for the habitual offender: A person is said to be a habitual offender when he has the habit of commits the same crime again and again. The habitual offender shall be punished with imprisonment for the term of 5 years which may extend to 10 years and fine.

Section 15:-

Punishment for attempt: A person who commits an offence of misappropriation of funds or property shall be punished with imprisonment of 3 years and fine.

Section 17A:–

Granting sanctions for the prosecution: The government needs the public officials for prosecution. The amended act extends the protection of requirement of prior approval to any inquiry, inquiry or investigation before prosecution. There will be no need of prior approval will be necessary for cases involving the arrest of a person on the spot on the charge of accepting or accepting to accept any undue advantage for himself or any other person.

Section 18 A:-

A provision of criminal law amendment ordinance, 1944 to apply to attachments under this act: shall as far as may be, apply to the attachment, administration of attached property and execution of the order of attachment or confiscation money or property procured through an offence under this act.

Section 29:-

Powers to make rules: The central government has the power to make rules for carrying out the provisions of the act.

According to a survey, it has been reported that all over India, more than 70% of the people are corrupt. Almost every other individual is engaged in one or the other business through which they could earn black money besides their income or profits. While observing the functioning of government organizations, many agents are seen working and acting as a medium to resolve the problems as well as completing the work of those individuals facing some problems. The same is done by means of corruption and bribery, given by the common people and accepted by the agents on the pretext of faster completion of their work and resolution of issues. The people usually have fear of long lines and crowded places, delay in the whole process, postponement in the resolution of issues and so such people end up paying the money to the agents. Thus, it can be concluded that the people of India are itself giving birth to this heinous offence of corruption and this special act is made to stop corruption.

Q5. Define White Collar Crimes and its impact in India.

Introduction

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

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

Related to the corporate sector, white collar crimes are defined as non-violent crimes, generally committed by businessmen and government professionals. In simple words, crimes committed by people who acquire important positions in a company are called white collar crimes.

White collar crime in India

Corruption, fraud, and bribery are some of the most common white collar crimes in India as well as all over the world. The Business Standard on 22.11.2016 published a report titled '*The changing dynamics of white collar crime in India*' stating that in the last 10 years, the Central Bureau of Investigation (CBI) has found a total of 6,533 cases of corruption out of which 517 cases were registered in the past two years.

Statistics showed that 4,000 crores worth of trading was carried out using fake or duplicate PAN cards. Maharashtra showed a rapid increase in the number of online cases with 999 cases being registered. The report also mentioned that around 3.2 million people suffered a loss because of the stealing of their card details from the YES Bank ATMs which were administered by Hitachi Payment Services.

Advancement in commerce and technology has invited unprecedented growth in one of the types of white collar crimes, known as cybercrime. Cybercrimes are increasing because there is only a little risk of being caught or apprehended. India's rank on Transparency International's corruption perception index (CPI) has improved over the years.

In 2014, India was ranked 85th which subsequently improved to 76th position in 2015 because of several measures to tackle white collar crimes. In 2018, as per the report of The Economic Times, India was placed at 78th position, showing an improvement of three points from 2017, out of the list of 180 countries.

India is a developing country and white collar crimes are becoming a major cause for its under development along with poverty, health, etc. The trend of white collar crimes in India poses a threat to the economic development of the country. These crimes require immediate intervention by the government by not only making strict laws but also ensuring its proper implementation.

Reasons for the growth of white collar crimes in India

Greed, competition and lack of proper laws to prevent such crimes are the major reasons behind the growth of white collar crimes in India.

Greed

The father of modern political philosophy, Machiavelli, strongly believed that men by nature are greedy. He said that a man can sooner and easily forget the death of his father than the loss of his inheritance. The same is true in the case of commission of white collar crimes. Why will a man of high social status and importance, who is financially secure, commit such crimes if not out of greed?

Easy, swift and prolong effect

The rapid growing technology, business, and political pressure has introduced the criminals to newer ways of committing white collar crimes. Technology has also made it easier and swifter to inflict harm or cause loss to the other person. Also, the cost of such crimes is much more than other crimes like murder, robbery or burglary, and so the victim would take time to recover from it. This would cut down the competition.

Competition

Herbert Spencer after reading 'On the Origin of Species' by Darwin, coined a phrase that evolution means 'survival of the fittest'. This implies that there will always be a competition between the species, and the best person to adapt himself to the circumstances and conditions should survive.

Lack of stringent laws

Since most of these crimes are facilitated by the internet and digital methods of transfer payments, laws seem reluctant to pursue these cases as investigating and tracking becomes a difficult and complicated job. Why it becomes difficult to track it is because they are usually committed in the privacy of a home or office thereby providing no eyewitness for it.

Lack of awareness

The nature of white collar crimes is different from the conventional nature of crimes. Most people are not aware of it and fail to understand that they are the worst victims of crime.

Necessity

People also commit white collar crimes to meet their own needs and the needs of their family. But the most important thing that the people of high social status want to feed their ego.

Q6. What are the reasons behind White Collar Criminals going unpunished?

The reasons behind white collar criminals going unpunished are:

- Legislators and the people implementing the laws belong to the same class to which these occupational criminals belong.
- The police put in less effort in the investigation as they find the process exhausting and hard, and often these baffling searches fail to promise favourable results.
- Laws are such that it only favours occupational criminals.
- The judiciary has always been criticised for its delayed judgement. Sometimes it so happens that by the time court delivers the judgement, the accused has already expired. This makes criminals loose in committing crimes. While white collar crimes are increasing at a faster rate, the judiciary must increase its pace of delivering judgements.

Chronological Background

Popularly known as the *Carrier's case*, it was the first case of white collar crimes which was documented in the year 1473 in England. In this particular case, the agent was entrusted with the responsibility of the principal to transport wool from one place to another. The agent was found guilty of stealing some of this wool. The English Court after this case adopted the doctrine of 'breaking the bulk' which means that the bailee who was given the possession of goods tried to break it open and misappropriate the contents.

However, the growth of industrial capitalism has taken criminality to the next level. The bourgeois institution dwells into committing such crimes out of greed and misery to have and to be able to attain more. In 1890 in America, the Sherman Antitrust Act was passed, which made monopolistic practices illegal. The penalties imposed on offenders of white collar crimes in Great Britain and the adoption of competition or antitrust laws by other countries were not as sweeping as the Sherman Act.

In the late 18th and early 19th century, a group of journalist rose the sentiments in the mass seeking reforms. By 1914, Congress was seen making great efforts in strengthening the sentiments laid down by the Sherman Act. This Act proved out to be more stringent in comparison to the Sherman Act in dealing with the monopolistic illegal practices.

Historical background

Edwin Sutherland's Definition

It was in 1939 when for the first time Edwin Sutherland, an American sociologist, defined white collar crimes. He described it to be crimes committed by a person of high social status and respectability who commits such crimes during the course of their occupation.

Criticism

Coleman and Moynihan pointed out that Edwin Sutherland's definition had certain ambiguous terms, like:

- It has not laid down any criteria for who these 'persons of responsibility and status' would be.
- Also 'person of high social status' is not clear. It is perplexing as the meaning of the phrase in law could be different from its general definition.
- Sutherland's definition did not take the socio-economic condition of the person into consideration. It only showed the dependency of white collar crimes on its type and the circumstances in which it was committed.
- Mens rea, i.e. guilty mind and actus reus, i.e., wrongful conduct are two essential elements to constitute a crime. However, Sutherland's definition implies that according to him white collar crimes does not necessarily require mens rea.

Morris's Comments. In 1934, Albert Morris advanced that, the illegal activities that people of high social status involved in during the course of their occupation, must be brought with the category of crime under which their illegal activity falls. He also asserted that it should be made punishable.

E.H. Sutherland's demarcation

Sutherland again came into the picture and clarified that the crimes which would be committed by people belonging to high socio-economic groups, during the course of their occupation, would be termed as 'white collar crimes'. And further said that the traditional crimes would be denoted as 'blue collar crime'.

So he drew a distinction between white collar crimes, i.e. corruption, bribery, fraud, and blue-collar crimes, i.e., traditional crimes like robbery, theft, etc. After this, criminology in the year 1941 finally recognized the concept of 'white collar crimes'.

Q7. Differentiate between White Collar Crime and Blue-Collar Crime.

Difference between white collar crime and blue-collar crime

The term 'blue collar crime' came into existence sometime in the 1920s. The term was then used to refer to Americans who performed manual labor. They often preferred clothes of darker shade so as to stains less visible. Some used to wear clothes with a blue collar. These worked for a low wage on an hourly basis. White collar crimes have been prevalent since centuries and it is not new to all types of businesses, professions and industries.

The difference between 'blue collar crimes', which are crime of a general nature, and 'white collar crimes' was laid down by the Supreme Court of India in the case of *State of Gujarat v. Mohanlal Jitamalji Porwal and Anr*[2]. Justice Thakker elucidated that one person can murder another person in the heat of the moment, but causing financial loss or say committing economic offences requires planning. It involves calculations and strategy making in order to derive personal profits.

Here are the characteristics of white collar crimes which distinguish it from other crimes of general nature:

Meaning

Blue-collar crimes refer to people who work physically, using their hands, whereas white collar crimes refer to knowledgeable works, who use their knowledge to commit crimes.

New v/s Traditional

Where blue-collar crimes refer to traditional crimes that have been committed since ages, the concept of white collar crimes has recently developed. It's a new species of crime.

Mens rea

To constitute a crime element of *mens rea* and *actus reus* is must. Where *mens rea* is an essential element of blue collar crimes, its involvement in white collar crimes is not necessary.

Independent of social and personal conditions

White collar crimes have no relation with the social conditions, like poverty, or personal conditions of the offender *albeit* it matters in the conventional nature of crimes.

Direct access to the targets

Since the offenders who commit white collar crimes are people at a higher position in a company they have easy, direct and valid access to their targets. The case is different with blue-collar crimes. For example, if Jhethalal decides to commit theft in the house of Babitaji, he will first have to break the door or make a passage of entrance to get inside Babitaji's house and thereafter commit theft.

So, before actually committing theft, Jhethalal will first have to get access to Babitaji's house. Whereas in white collar crimes, one can have direct access to their target making use of one's higher position and power.

Veiled offenders

In the case of white collar crimes, one does not have to come face to face with the victim and so their identity remains veiled. Whereas in case of blue collar crimes, one has to come face to face in order to inflict injury upon others.

Involvement of politicians

In many cases it has been found that the offenders have strong connections with politicians and sometimes, politicians are also involved in committing the crime thus making it difficult for the victims to take action against such offenders.

Greater harm

The harm caused by white collar crimes are much more difficult to bear than those inflicted by blue collar crimes. Also, the harm caused by white collar crimes could cause great harm, not only to the public, but to the other institutions and organizations as well.

Q8. Briefly explain the effects of White Collar Crime.

<u>Effects of white collar crime</u>

- Effect on the company

White collar crimes causes huge loss to companies. In order to recover the loss, these companies eventually raise the cost of their product which decreases the number of customers for that product. This works according to the law of demand states that, other things being equal, when the price of a commodity rises, it's demand would fall and when the price lowers, its demand would increase.

In short, the price of the commodity is inversely proportional to its demand. Since the company is in loss, the salaries of the employees are lessened. Sometimes the company cut down the jobs of several employees. The

investors of that company and its employees finds it difficult to repay their loans. Also, it becomes hard for people to obtain their credits.

For example, a US-based IT cognizant landed up paying 178 crore rupees to settle the charges levied on it under the Foreign Corrupt Practices Act by the Securities and Exchange Commission. The company had bribed an Indian Government Official from Tamil Nadu to allow the building of a 2.7 million square feet campus in Chennai. Apart from loss in paying 2 million dollar bribery amount, the company also had to bear extra charges of 25 million dollars to get free from the charges.

- **Effect on the employees**

White collar crimes endanger employees. They become conscious of their working conditions, whether it is safe anymore or not. They start doubting if they are safe and that they can still be given in their trust to the company.

- **Effect on customers**

The most important concern of the customers is whether the products which they are using is safe or not. This doubt rise to see the rate at which white collar crimes have been increasing.

- **Effect on society**

White collar crimes are harmful to the society for those people who should be cited as a moral example and who must behave responsibly are one committing such crimes. The society thus becomes polluted.

When the former director of Andhra Bank and the directors of a Gujarat based pharma company, Sterling Biotech, were arrested for their involvement in 5000 crore fraud case. They used to withdraw money from bank accounts of several benami companies. This was one big scam which put the people in fear.

Also in 2018 the Punjab National Bank (PNB) found that fraudulent transactions of value 11, 346 crore rupees have been taking place in its Mumbai branch. "*The Staff there used to fake LoU (Letter of Understanding) for the buyer's credit to the company of Nirav modi and Gitanjali Group*", as published in the Business World.

- **Loss of confidence**

Stock fraud or trading scandals, like that happened in the U.S. in the 1980s, makes people lose faith in the stock market. Barry Minkow, a teenager and the owner of the business of carpet cleaning built a million dollar corporation in the 1980s. But, he was able to achieve this only through forgery and theft.

He managed to create more than 10,000 counterfeiting documents and sales receipts without coming to someone's notice. His company although created through fraud was able to make market capitalization of 200 million dollars and leased 4 million dollars of land. Later, he was sentenced to 25 years of imprisonment.

Eron was the seventh largest energy trading company, based on revenue, in U.S. Forgery made them waive off hundreds of millions of debts out of their book. The investors thought that the performance of the company was really good and stable. But later on it as found that the incredible numbers on revenue records were fictitious. The famous Eron scandal where all the retirement accounts were wiped out it was found that people had loss their normality, their power and public confidence.

- **Effect on offenders**

The authorities have shown no consensus on the definition of white collar crimes. There are no accurate statistics available to analyse the causes and effects of such crimes and therefore government fails to take exact measures to prevent them. Also, though these crimes are on the rise, they are generally not reported.

These crimes have no eyewitnesses as they are committed *in camera*, which means that the offenders commit these crimes while sitting in a closed room or in their personal space using their computers, and nobody could know about what they are doing on their computer.

This makes it difficult to track the offenders. All these loopholes becomes an incentive for the offenders to fearlessly commit such crimes because the punishment is also for a short term unlike in blue-collar crimes. Offenders are mostly seen roaming freely which poses a danger to the society.

- **Effects on the temperament of the affected person**

The target of the offenders are generally elderly people with little access to liquid assets and their cognitive ability is less than that of younger people. So they become an easy target for the offenders. The victims of such crimes often undergo depression and are seen to have suicidal tendencies, because sometimes the loss incurred is unbearable.

The renowned startup founder, **Vijay Shekhar Sharma**, the person who founded the widely used app for transaction namely Paytm, became a victim of blackmailing by his personal secretary Sonia Dhawan. She along with others stole his personal data along with sensitive business plans, to extort money from him. Also, Sharma received regular calls stating that his personal information would be revealed to the public if he doesn't give the required amount to them. Sharma was put under a lot of pressure.

Various committees were formed to look into white collar crimes and set up rules and regulations to prevent them and ultimately eliminate them.

- The Report on the Commission on the Prevention of Corruption, 1964

On the recommendations by the Committee on Prevention of Corruption, headed by Shri K. Santhanam, the Central Vigilance Commission was created in 1964. The Central Vigilance Commission is now the apex institution for vigilance, independent of any executive authority. Its function is to address corruption in government offices and to monitor all vigilance under the Central Government. This organization seeks its advice in planning, executing and reviewing their vigilance work.

The role that the Central Vigilance Commission plays is:

1. To supervise the work of Delhi Special Police Establishment in only those matters which relate to the offences which have been committed under the Prevention of Corruption Act, 1988.
2. To direct the Delhi Special Police Establishment in discharging their responsibility given to them under sub-section (1) of section 4 of the Delhi Special Police Establishment Act, 1964 .

- The Report on the Commission of Inquiry on the Administration of Dalmia Jain Companies, 1963

In the 1930s Dalmia Group run by brothers, Ramkrishna Dalmia and Jaidayal Dalmia, merged with Sahu Jain Family to form Dalmia-Jain Group. This business was ultimately split between the two families and again between the two brothers in 1948. On the allegations of corruption against the group, Vivian Bose Commission of Inquiry into the affairs of Damila-Jain group of companies was set up in 1963.

The committee said that because of the group's collection of black money, undisclosed assets and undetermined income tax liabilities, the dissolution or split had become so complicated that it could not be officially said that the groups had split. The Commission headed by Justice S.R. Tendulkar and after his death by Justice Vivian Bose, sentenced Ramkrishna Damia on charges of tax evasion, perjury and criminal misappropriation of funds in 1962.

- **The Report on L.I.C. Mundra affairs**

It was in the 1950s when, Haridas Mundhra, a stock speculator was arrested and imprisoned in the case of the first big financial scandal of newly independent India. At that time, Jawaharlal Nehru was the Prime Minister of India. His daughter Indira Nehru was married to Feroze Gandhi, who was also a Member of Parliament. Feroze Gandhi was the driving force behind the anti-corruption movement which led to the imprisonment of Ramkrishna Dalmia.

When Feroze Gandhi finally came to power he questioned whether the newly established Life Insurance Corporation had used premiums from the policyholders. Ultimately a committee was set up which was headed by the retired judge of the Bombay High Court, Justice M.C. Chagla which came to the conclusion that Mundhra be sent to jail on the ground of, as many as 124 prosecutions against him and 113 of them resulting in convictions.

- **Das Commission Report, 1964**

In the case of R.P. Kapoor v/s Pratap Singh Kairon [3], Pratap Singh Kairon, who was the Chief Minister of Punjab was accused of using wealth to boast his high status of and also of his family at public expense. The Commission exempted him on the ground that a father could not be held liable for actions of his grown-up children. The Commission clarified that a son cannot be stopped from carrying out a business of his choice except that the son cannot use his father's political position and power to exploit others. The petition was therefore dismissed by the court.

- **Administrative Reforms Commission on Reports**

Administrative Reforms Commission's 4th report titled 'Ethics in Governance' had made amendments and included new provisions in order to reduce the number of white collar crimes in India.

1. The report introduced a new provision stating that partial funding by the state is allowed in elections so as to avoid illegitimate and unnecessary expenditures by the political parties.
2. It suggested an amendment to section 8 of the Representation of the People Act, 1951, keeping people facing charges in case of a grave or heinous crimes and corruption out of participating in elections.
3. The report on the election of the Chief Election Commissioner and other Election Commissioners decided to form a collegium in order to select them. The collegium would consist of the Prime Minister of India, the Speaker of Lok Sabha, the Law Minister and the Deputy Chairman of the Rajya Sabha as its members. This would prevent in wrongful exercise of power and prevent manipulation by the authorities enjoying dominance.
4. It was proposed that an office of 'Ethics Commissioner' be formed by each House of the Parliament. This office would be regulated by the Speaker or the Chairman to follow the code of ethics, to advise the body whenever required and maintain records of the office.
5. Most importantly the Commission asked the Government to recognize 'collusive bribery' as a special offence. The Commission advanced that section 7 of the Prevention of Corruption Act needs an

amendment for the inclusion of 'collusive bribery' as an offence. This would prevent the public servants from performing such acts which leads to loss to the public.

6. The Commission also recommended to take immediate measures for the implementation of Benami Transactions (Prohibition) Act, 1988.
7. The Commission gave protection to whistleblowers on the grounds of confidentiality. And also made harassment and retaliation against them a punishable offence.
8. The Commission said that the media should have their Code of Conduct and self regulating mechanism to avert from wrongful actions and government be allowed to disclose the cases of corruption to media in order to help them fight against corruption in the country.
9. The Commission made an important decision stating that the head of the office should be given the responsibility to take proactive vigilance on corruption.

There are other provisions that were presented by the Commission before the Government thereby assisting the Government in their fight against corruption and other malpractices by the people at higher positions in the authority.

- **Law Commission 47th Report**

In its 47th report, the Law Commission said that since a corporation does not have a physical body, no pain can be inflicted upon them as a punishment. A corporation does not have a mind that can be accused of guilty intent and therefore new penalties should be created to punish them for their illegal and wrongful acts.

The Commission found that the real penalty for the corporation would be to experience a curtailment in their reputation. And that they be called a disgrace. The commission said that not only the directors or managers should be punished but the corporation as well. The people should be able to link the offence with the name of the corporation also.

The Commission recommended the inclusion of the following provisions in the Indian Penal Code, 1860:

1. In every one of those cases where the offence has been committed by the corporation and the punishment includes imprisonment or fine and imprisonment both, the court will have the power to impose on these offender fine only.

2. In every one of those cases where the offender is the corporation and the punishment for his offence can be either imprisonment and any other punishment other than fine, than in that case the court shall have the power to impose on such offenders fine only.
3. In this section, 'corporation' should mean an incorporated company or other body corporate. It would also include firms and other association of individuals.

Like the above mentioned provisions, the Commission in its report has mentioned the punishment the offender corporation or company would be subjected to.

- **The Report by Santhanam Committee**

The Santhanam Committee was the first body to recognize the intensity of the crimes committed by the people of high social standards, which was acknowledged by the 29th report of the Law Commission released in 1972. Santhanam Committee in its report on the Prevention of Corruption has talked about the reasons behind the prevalence of white collar crimes in India.

The technological advancement and development in scientific temperament has been assigned as the major reason behind the growth of white collar crimes. These large numbers with advanced disposition is being regulated by only a handful of elite who form the monopoly. The need of this technologically and scientifically advanced era is to make these masses adhere to the rules laid down by the elites to conduct them. Those who fail to do so land up becoming the offender of white collar crimes.

The committee showed its concern regarding the great damage that these crime can cause to the public morals. The case of white collar crimes are so complex and since people are not much aware about it, it is only the experts who can recognize such crimes and protect themselves from becoming a victim of it.

Q9. What are the types of White Collar Crimes in India?

Types of white collar crime in India

The ambit of white collar crimes is varied. Some of the white collar crimes that have been reported in India are:

- **Blackmail**

Section 503 of the Indian Penal Code, 1860 defines blackmailing or criminal intimidation as, making a demand for money or any other consideration by imposition of threat to cause physical injury, or to cause damage to ones property, or to accuse one of a crime, or to expose somebody' secret. The threat can be induced in the following ways:

1. By revealing a secret of the person which the offenders knows if revealed will cause great embarrassment to the victim. For example, if A, the Managing Director of the company XYZ, knows that B, a female employee of the same company, was bearing the child of somebody other than her husband. A asked B to commit forgery on the account papers so that he could embezzle 20 lakhs rupees from the company without anybody knowing about it, or else he would reveal her secret which would cause great embarrassment not only to her but her family as well.
2. By revealing those matters of the victim which are sensitive enough to cause financial loss to him. For example, if X knows that the property Y owns has been fraudulently been taken over from Y's parents by deceitfully taking their signatures on the will. The X, a senior manager of a law firm, asks Y, a junior employee of the same company, to take out the file containing the personal details of the chief secretary of the company from the storehouse of the company. When Y refuses to do so, X threatens to reveal her secret of forgery to the police. X is said to be blackmailing B.
3. By doing acts which could falsely accuse the other person of a crime, thereby affecting his life in many ways. For example, when X, an officer at senior most post asks her secretary to marry his son else he would falsely accuse her of embezzlement of 10 lakhs rupees from the company, which actually has been done by X. This is blackmailing as a white collar crime.
4. By revealing a report which shows that person's involvement in a crime. For example, M, the lawyer of N, and an old enemy of his, which N has no idea about, in a murder case, asks him to pay him double the amount else he would give the court the recordings in which M has confessed that he had murdered the person and the manner in which he has committed the same. This is blackmailing.

When does blackmailing become a white collar crime?

For blackmailing to be considered under the ambit of white collar crime, it should be committed by or show an involvement by someone enjoying higher social status in an occupation.

- **Credit card frauds**

These frauds are committed when one person uses the credit card of another person unauthorizedly to obtain goods of value, he is said to have committed credit card fraud against the other person. For example, in 2003

in Mumbai, Amit Tiwari, a 21 years old engineering student was arrested for using too many names, for having too many bank accounts and too many clients, all false managed to defraud a Mumbai-based credit card company, CC Avenue, of around 9 lakhs rupees.

This case brought to the notice of the authorities that credit card frauds have not been recognized by the Information Technology Act, 2000. The loophole in the law has caused a great loss to the company.

As per the report released by the Economic Times, it was found that over 900 cases of credit/debit cards and internet banking have been registered during the period of April-September, 2018. All these cases involved an amount of 1 lakh rupees and above. Minister of State for Electronics and IT (2018), S.S. Ahluwalia, informed that the Reserve Bank of India by 30th September, 2018 had registered a total of 921 cases of credit/debit card fraud.

In 2017 a Metropolitan Magistrate became a victim of credit/debit card where the victim received two messages for two transactions done from his debit card, not in India, but abroad. The victim claimed that those transactions did not have his consent. A complaint of cheating under Section 420 of the Indian Penal Code, 21860 was filed.

- **Currency Schemes**

These schemes basically refers to the practice of determining the value of the currency in the near future. The determining of the value is not based on any firm evidence though.

According to a report, '*Trend and Progress of Banking in India*' released by the Reserve Bank of India, published by the Financial Express in January, 2019, it was alleged that the banks have lost 41,168 crore rupees in the financial year of 2018 which shows a 72% rise from what was in 2017. The reason behind this rise is the fraud against currency schemes. The report cited that fraud have turned out to be a major concern with a 90% rise of such cases in the credit portfolio of banks with the major chunk of fraud being concentrated in off-balance sheet operations, foreign exchange transactions, deposit accounts and cyber-security.

Common types of currency schemes in India

- **Schemes involving advance payment of fees**

In these cases the victims are asked to make an advance payment of the sum. They would be promised to be receiving just the double of what they have invested. But one the money has been given, no track of the offenders can be found. In these cases, the scammers target those people who have already lost much amount somewhere. An appeal is made to their sentiment that the amount they are investing would be doubled and they would be able to recover the loss caused from the last transaction done by them.

The commission of this type of fraud had originated from nigeria. The first case of 'Nigeria 419' in India was registered in August in 2003 where Piyush Kankaria, a Howrah-Kolkata based businessman filed a multi-million fraud case under Section 420 of the Indian Penal Code, 1860. Piyush, out of financial crises, had become a victim to this fraud where he had to claim 7.5 million dollars from an account in return for 3 million dollar and for which Piyush had already advanced a mobile handset as a gift.

- **Scams in the boiler room**

Boiler room refers to the office which are frequently changed, that is, the office which is not stable and shifts regularly. In these cases, the scammer creates a website giving all fake or false information. The address given on the website would be a temporary one, the toll-free number would be invalid, though all will appear legitimate on the screen. By the time one realizes that they have been defrauded, the scammer moves on to another similar scam at some other place.

It was recently in 2019 itself when a person by the name of Rohit Soni, from Rajasthan, who was a B.com. Graduate created a fake Amazon website similar to the original website. How Rohit made a profit out of it was by providing the customers with a link which gave access to an app named '4Fun', and for every download he received a sum of 6 rupees.

Exempt securities scam

Exempt securities scam refers to the selling of securities by a company without filing a prospectus. This offence is committed against wealthy people who are persuaded to invest in a business. The offenders pitch a fraudulent investment as 'exempt' securities. A fake promise is made to the victim that the business would go public. These scams involves a great risk and make you lose all your investments.

It was in 1992 when an Indian stockbroker, Harshad Mehta, was held guilty with as much as 27 charges released against him for having committed various financial crimes under the securities scam of 1992. Harshad had been accumulating huge wealth through massive stock manipulation facilitated by the use of fake or worthless bank receipts.

The Bombay High Court, as well as the Supreme Court of India, held him guilty for being a part of a huge financial scandal involving 4999 crore rupees. This scandal had taken place against the biggest stock market that is the Bombay Stock Exchange (BSE). After having lived in jail for 9 years Harshad Mehta dies in 2001.

Scams in the foreign exchange market

In the foreign exchange market, investors buy and sell currencies depending upon its exchange rate. These markets are often dominated by large and developed banks that have plentiful resources at hand. The staff in such organizations are well skilled and trained in using the advanced technology and therefore it becomes difficult to beat these professionals.

In the foreign exchange market, it is not new to see people becoming prey to the illegal or fraudulent schemes known as forex schemes. Since these schemes are often carried online from another country, the chance of losing your money is high as one is likely to buy services from those firms which are not legitimately set up can market their services *ultra vires*. It is easy to fake things online. The result of these scams could be that the money one invests might get stolen and one might lose everything that he had invested.

As per the report published by the Times of India in 2017, the Central Bureau of Investigation has held a total of 13 private companies responsible for sending unknown foreign remittances which hold the value of 2,253 crore rupees under bogus imports of goods during 2015-2016.

Similarly in 2015, as published by the Times of India, the Bank of Baroda was alleged to have been involved in forex scam worth rupees 6,172 crore. This money was sent from India to Hong Kong for importing cashew nuts, pulses and rice. However, at a later stage it was found that nothing was imported and instead all this money went into 59 different bank accounts of several companies.

Similarly, in 2015-16, the Directors of a Mumbai-based company called M/s Stelkon Infratel Pvt. Ltd., Manish Prakash Shyamdasani and Mungaram Hakmaram Dewasi, were held liable for their indulgence in large scale illegal foreign remittances under fraudulent imports of goods 2015-16.

Offshore investing scams

These scams induces a person to send their money 'offshore' to some other country to get more money in return than invested. These scams mostly aim at exempting a person from paying taxes. But the ultimate result of it is that people land up paying money in back taxes, and penalties.

The major risk involved in these scams is that the victim in cases of foreign investment are not able to seek remedy from the civil court and thus one is not able to recover the invested money.

It was in 2008 when Ketan Parekh, a stockbroker from Mumbai, and the Director of the Madhavpura Mercantile Co-operative Bank, was convicted for his involvement in the scam that happened between 1998 to 2001 in the Indian Stock Market. Parekh was held responsible for rigging price artificiality of securities.

He had been able to do this by borrowing money from various banks including his own bank which he was the Director. What parekh used to do was, at first place, he purchased large stakes from small market capitalization companies. He continued to do so unless a large sum of money has been accumulated and then jacked up the prices via circular trading with other traders, collusion with other companies as well as with the large institutional investors. This led to a huge rise in the prices of the shares. For example, the price of the shares of Zee telefilms rose from 127 rupees to 10,000 rupees. These stocks were referred to as the 'K-10' stocks and Parekh was given the name of 'Pentafour'.

For the purpose of looking into such a scam, Joint Parliamentary Committee was set up which found Parekh guilty of circular trading of money and rigging the prices of 10 companies from 1995 to 2001, on a false pretext.

Scam against the pension of a retired person

Older people have their retirement accounts where they keep their savings for the period after retirement from their services. Usually, money from these accounts can be withdrawn only after the attainment of a certain age, and only a certain sum of money can be withdrawn in a year, and also some tax is imposed on the money withdrawn.

Some company can fake such accounts. It can ask the person to invest in their bank where they would be able to keep their savings safely. The bakers asks the person to buy the shares of the company from their savings which would be repaid by granting 60-70% loan from the invested money and the rest would be kept by the bank as a fee. These promises turns out to be fake and the investment made, worthless. There is a high possibility to lose one's retirement savings in totality to such scams.

It was in 2009 when India Today published a report on pension scams in India. The report said that in Uttar Pradesh, a huge amount of money which was supposed to be used for giving pension to the 60-years-old people, who were Below the Poverty line (BPL) and used to earn 300 rupees per month were being given to younger people.

The scheme was basically meant for the older people from the lower strata of the society. The divesting of the money to young people was assisted by the Uttar Pradesh Government by issuing fake BPL cards and

certificates showing false age. This helped each beneficiary of the scheme to earn 3,600 rupees annually, half of which was given as a commission to the official who has helped the very person in forging the documents.

Double dip scam

The person who has already been a victim of a scam is likely to become a victim again. And when it happens, it is called a double dip scam. The offender in the first instance can store the information of the victims and pass on to other such offenders, thereby assisting them in making money fraudulently.

The case might also be that the first offender calls you again and you spill out your grudge from the first fraud that you have become a victim of. The scammer then offers you to recover your money in return for a small fee. One would again lose one's money in this way.

Unveiling the double dip scam taking place within political parties, the India Today has published a report back in 2016 when politicians were found to have converted back money into white money for 40% commission. The political parties were found double-dipping as brokers for undeclared wealth. There politicians used to do the business of converting black money into white in near to their offices in Ghaziabad, Noida and Delhi.

Such types of situation where politicians indulge in wrong practices have been very common for the politicians enjoy powerful position which comes with various powers, they tend to manipulate things and make illegal profits, which are basically the money supposed to be used for public welfare. And ultimately it is the common people who suffers the most.

Scam by building a relationship

In such cases the offender targets a group of people, or organizations or communities. The offender in cases are somebody close that the victim. He builds a relationship of trust with the victim, or become a member of the same religious community against whom he has committed fraud, and then misusing the faith people have planted in him, he gains profit by cheating those people. These scams are also called affinity scams.

Ponzi scam

Ponzi scam, also known as pyramid scam is a type of affinity scam where the scammer would through emails and advertisements offer one to earn huge profits by sitting at the comfort of their living room, only by investing a certain amount of money. They also keep exciting offers like early birds would be able to make

more profits. After investing their money in such schemes people land up having nothing in their hand, as the scammer runs away with the money leaving behind no clue of their existence so as to track them.

The cases of ponzi scheme in India are:

1. In November, 2018, Gaylen Rust of Utah was accused by the Government for running ponzi scheme and generating huge wealth, like that if 25-40% per year,which is about 47 to 200 million of money. It was found that more than 200 people had become a victim of this scheme.
2. In the same year when Gaylen ruth was found guilty, in the month of September, a person by the name of Claud R. 'Rick' Koerber, from Utah itself, was found guilty of running a ponzi scheme. Under this the investors in the property had suffered a loss of 100 million.
3. In 2017, Michael Scronic from New York, was held levied with civil and criminal charges, causing a loss of 27,000 million dollars to the investors.

Pump and dump scam

A company who owns a large amount in a low-priced stock, which is actually an illegitimate business, will find potential investors and persuade them to invest in their stock. As more people would invest, the price of the stock would increase and when it reaches its peak the scammers would sell all the shares, earn profit and run away, taking with him all your money.

It was in 2015 when Rakesh Jhunjhunwala was said to have raised his wealth by purchasing 2,50,000 odd shares because of which though his shares of the 'Surana Solar' experienced an 18% rise, but after the dump-sum scam was discovered, the prices quashed. That is how a loophole in the system was also discovered.

The happening of such scams reveals that there is no proper system to check the authenticity of the information being supplied. And taking the advantage of such a loophole, the Surana Solar made namesake deals easily with the investors causing them great loss.

Scams by way of sending spam emails

Often the scammer sends spam mails making fake offers and promises. In the year 2017, a record of 7.5 million cases of spam mails was discovered. Once you reply to such emails you get caught in the trap as these mails are fraudulent. Most of these mails are regarding microcap stock where investments are highly risky when compared to other stocks.

The customers of the ICICI Bank became a victim of such scam where certain group of people representing themselves to be an official of the bank, asked for sensitive information about tye bank account and defrauded them. The fraud was finally discovered by the manager of the bank when a few of the customers who had received such spam mails filed a complaint. Such a scam in the IT Act is defined as 'phishing'.

The act of embezzlement

When a person who has been entrusted with money or property to use it for his own use and benefits starts using it any manner other than what it has been given for in an illegal manner then the person would be liable for embezzlement. The act of embezzlement may be characterised as criminal breach of trust which has been defined in section 405 of the Indian Penal Code, 1860.

It defines criminal breach of trust as *an act where a person who has been entrusted with a property misappropriated it or falsely converted it to his own use or dispose of it without any law allowing him to do so.* Embezzlement is a misappropriation of someone's property where a person has an intent to cause loss to the other person and criminal misappropriation is an offence under Section 403 of the Indian Penal Code, 1860.

The essential elements that constitute the crime of embezzlement are as follows.

1. The two parties must share a fiduciary relationship, that is, a relationship based on trust.
2. It is important that the defendant receives a certain amount of money or asset by making wrongful use of this relationship.
3. The defendant while embezzling the asset or money should act like he is the owner of that goods or he owns the money which he is giving to another person
4. There should be an intention to deceive on the part of the offender.

Some examples of embezzlement and the respective sector in which they are committed as a white collar crime are:

1. In Banking sector the bank tellers, who are people directly dealing with the customers gives them access to the funds of the bank for work.
2. The clerks or the cashiers in stores gives the customers or any person access to the till money kept in the store. Till money refers to the money which the bank keeps with it to meet everyday requirements for cash money.

3. It is often found that the company provides a car to its senior employees for official work. But these cars are seen to be used for purposes other than official duties which amount to embezzlement.
4. Many big companies, in order to make their employees technologically sounds provide them with electronic gazettes which are either sold in the market for a certain amount of money or used for some other purpose different than what the company has assigned.

Fraud with the insurance company

Sometimes the case may be that people use false documents to obtain insurance from the insurance company. For example, a person can fake the price of her property by raising its value on the fake documents and obtain insurance for that fake amount. They make the papers in such a way that it seems legitimate and insurance company get defrauded.

The case can also be that the consumer deliberately stage an accident, theft, injury or any other damage which comes under insurance policy. Or they sometimes exaggerate the damage caused. They even go on to omit or provide false documents or application or information to claim insurance. Also insurance fraud can be committed by an insurance company, agent or consumer where they deliberately deceive the other person for illegitimate financial gain.

Two officials of the Life Insurance Corporation of India were arrested for falsely extracting 3 crore rupees as death claims from the company. The officials forged documents they manipulated around 190 insurance policies with the account numbers of their acquaintances in place of the real nominee. Though the origin policy holders were alive they could not make out the fraud that has been made to them.

Relevant Legal provisions under the Indian Penal Code, 1860

- Section 205 which deals with *false personation in suit or in a proceeding*.
- Section 420 that deals in *cheating and inducing someone to deliver property with dishonest intentions*.
- Section 464 which talks about making *false documents*.

The kick-back fraud

A kickback fraud is one in which one person bribes another with something of value in order to convince the other to take a favourable decision. For example, a contractor in order to get the approval for building complex bribes the government official with a promise to give a small art of the land to him. In another

example, a biomedical company offers a doctor to advertise his products by advising it to his patients and in return, the company would provide him with free travelling for the next 5 years.

Abhishek Verma, the youngest billionaire at the age of 28 in 1997, known as the 'Lord of War', was arrested for his involvement in the Scorpene submarines deal case, AgustaWestland VVIP helicopter bribery scandal and Navy War room leak case. He was accused of having received kickbacks for a total sum of 200 million dollars.

Racketeering

It refers to a wrongful act or says criminal act of a person where he indulges in illegal business with a profit motive.

The number of cases of racketeering has experienced a rise in the recent times. According to a report published in India Today in February, 2019, Raju alias Hakla was arrested for his involvement in 113 cases of murder, dacoity and robbery. A kidney racket case was revealed in 2019 where a businessman from Gujarat, Brijkishore Jaiswal, was about to undergo an illegal kidney transplant. This happened in Powai's Hiranandani hospital. When the wrongful practice was unveiled, the CEO of the hospital, Sujit Chatterjee and 5 other people were taken under arrest.

Fraud in buying and purchasing of securities

When the broker of a company wrongfully shows the inflated price of stocks in order to make people invest in his stock, it is called securities fraud.

In 2019, pursuant to the report published by News18, Anilesh Ahija, known to the public as Neil, CEO and Chief Investment Officer of Premium Point Investments LP (PPI), an investment firm that managed hedge funds along with Jeremy Shor, former PPI trader, was arrested on the charge of securities fraud.

They collectively participated in a scheme to inflate the net asset value for hedge funds by more than USD 100 million. They started manipulating the funds by raising the value of the securities and thereafter obtained inflated quotes for the PPI which helped them raise USD 100 million. This kept the real value hidden and got the people into the trap by showing the inflated value of the securities of the PPI.

Fraud over calls

Commonly known as telemarketing fraud, these frauds are made over the phone calls. Here, a person is approached to make an investment for building a charitable organization, or asks for their bank account details

to obtain a certain amount for charitable purposes. The amount received is then used for any other purpose other than the one it has been taken for.

Paul Witt, a Supervisory Data Analyst at Federal Trade Commission provided an information for its consumer stating that, according to a report on the number of cases of fraud, it has been found that people have lost 1.48 billion in 2018 which shows a rise of 38% from what was in 2017.

Fraud in welfare activities

Welfare fraud is committed when a person tries to seek profit from the State or the Federal Government by deriving benefits from its activities like public assistance, food stamps, or medical facilities, etc.

For example, Abdul Karim Telgi, was accused in the stamp paper case in India where he appointed 350 fake agents to spread the scam around 12 States. This business included selling stamp papers to banks, insurance companies, and those firms which dealt in stock brokerage. He was able to club around 200 billion rupees.

Using wrong weights

The Consumer Forums are flooded with cases where shopkeepers use false weight to sell their goods. The people who become victims of these frauds are the ones who are illiterate. The illiterate could not make out if there are being defrauded by the seller. This sort of crime was prevalent at a very large scale in the early times. Now that digital weighing machines are used, the rate of these crimes have reduced. Also, since the literacy has gone up over a period of time, sellers face a difficulty in befooling their customers.

In *Emperor v. Kanayalal Mohanlal Gujar* [13] Sawkar, the accused, bought certain quantity of hirda from the vendor, Savleram. 'Adholis' which are primitive methods of measuring weights was used to measure the hirda. Despite warning from the patil of the village to not use these weights as they didn't give accurate measures, Sawkar agreed to use them and later on seize the adholis and filed the suit. Sawkar said that false weight have been used to measure hirda but the court said that since he had agreed to the same and also Savleram didn't had bad intent, Savleram would not be held liable for fraud.

Q10. Define Bank Fraud in India.

Bank fraud

Bank fraud is a criminal act where a person, by illegal means, withdraws either money or assets from the bank. The fraud can also occur when a person falsely represents himself to be a bank or financial institution and withdraws money or assets from the people.

Therefore we conclude that bank fraud can be committed in two ways:

1. By using illegal means to withdraw money or assets from the bank or any financial institution.
2. By falsely representing oneself to be a bank or any financial institution, the person extracts money or assets from people.

Bank frauds are punishable in India under the Indian Penal Code, 1860. Various sections like Section 403 which deals with criminal misappropriation of property, section 405 which deals with criminal breach of trust, section 415 which deals with cheating, section 463 deals with forgery and section 489A deals with counterfeiting of currency, deals with the crime of fraud in banks.

Types of bank fraud

- **Imitating a financial institution**

When one person falsely representing himself to be a financial institution, either by establishing a fake company or by creating a fake website in a manner that it would attract people and make them invest in that bank, then that person is said to have committed bank fraud.

The Times of India reported that two men were arrested for creating a fake website of State Bank of India and running a racket therein. They have been able to defraud people for rupees 1 crore. The two men were Sahil Verma and Monu from Haryana. They were alleged to have cheated against any people and made fraudulent use of the computer resources.

- **Defrauding by means of checks**

Offenders in this case obtains a job whereby they could have access to the company's post offices, mail boxes, corporate payrolls, etc. Once they gain access, they steal the checks and thereafter deposit it in a fake account created by them.

The timesnownews.com had published a news asking people to beware of fake emails being said to them in the name of RBI (Reserve Bank of India) lottery. The email contained the logo of RBI along with the address its head office in Delhi. Although RBI had circulated a warning against it, the id again came into circulation taking into its grip many innocent citizens.

- **Falsely getting loans approved**

Sometimes the person who is applying for a loan fakes information on the loan application and provides wrong documents to show himself as eligible for the loan. An individual can also wrongfully claim to be bankrupt, after obtaining a loan from the bank. This would also amount to bank fraud.

Anuj Pandey was arrested by the M.P. Nagar police for producing false documents and obtaining loans from the bank.

- **Bank fraud using internet**

People often become a victim of internet fraud. A person may create a fake website representing itself as a financial institution and advertising in such a way the it lures people to invest in that bank.

Three persons from West Bengal and Orissa were alleged for creating a fake website named, 'Rail Vikas Nigam Limited'. The website made fake representation to people regarding job opportunities. The accused who were arrested were, Narayan Patra and Govind Sinha. The victims complained that any information regarding working of the company, its achievements, and other advertisements were being reported on the official website but no recruitments were taking place.

There has been an unprecedented rise in the number of bank fraud cases as reported by livemint.com. According to a report by the Reserve Bank of India (RBI), a total of 5,916 cases of bank fraud has been reported in 2017-18 involving a sum of 41,167.03 crores. This included high profile fraud cases like that of Nirav Modi and Vijay Mallya.

Q11. Define Bribery and its impact on Indian economy.

- **Bribery**

Bribery is a white collar crime where a person asks for money, or a favour, or something of value in order to get the other person's work done. For example, if an electoral officer asks a person to offer him wine and only then will he be allowed to give vote, it would amount to bribery.

The punishment for bribery has been provided under Section 171E of the Indian Penal Code, 1860 which says that any person who commits such an offence would be imprisoned for a term which may extend to 1 year or with fine or both. Also, Section 13 of the Prevention of Corruption Act, 1988 has penalised acts constituting an offence under this head, being engaged in by public officials.

Types of bribery

- **Where public official bribes or is bribed**

If any public official demands, or exchanges something in return for performing his duty which he is bound to perform within the power of his office, then he would be held liable for bribery under the Prevention of Corruption (Amendment) Act, 1988. ‘

Also, if a person attempts to bribe a public officer for his own advantage or for getting his work done, then that person, along with the public official, will be held liable.

- **Where a witness bribes or is bribed**

When any witness demands, exchanges, or receives bribery in any form to give false testimony, or for bringing in a fake witness in the court, then he would be held liable under the crime of bribery.

- **Where a foreign official bribes or is bribed**

It is illegal to bribe a foreign government official with money or gift. Government officials often indulge in this type of white collar crime to maintain important business contacts.

- **Bribing bank officials**

It is illegal to bribe a bank official, director, manager, etc. with either meals, entertainment, or any other way, either for employment, or wages or hike in salaries.

- **Where a sporting official bribes or is bribed**

A sporting official may ask for a bribe to ‘fix’ a match. In this case the one briefing and the one who received the bribe, both will eventually be held liable for committing a crime.

- **Bribing in an industry**

Kickbacks are often associated with industries like, health industry, or in pension plans, etc. For example, one pension provider bribes the broker of a company to convince that company, to accept his pension offer and not offers made by other pension providers.

Q12. Critically examine the impact of Cybercrime in India.

- **Cybercrime**

As the use of computer and internet is increasing, so is the crime related to it. The crimes which involves the use of computer, coupled with the use of internet are called cybercrime. It is where the computer is used as the object of the crime or as a tool to commit an offence.

The only legislation which deals with the offences related to cybercrime is Information Technology Act, 2000. The exact definition of cybercrime hasn't been provided in any of the acts or laws as it is not possible to define such a nature of crime where computer and internet is involved.

Categories of cybercrime

- **Property**

This sort is similar to a real-life instance where a person illegally possess someone's bank account or credit card details. Here the hacker intrudes into the personal details related to the account or credit card to gain access to the funds, to make purchases or to run phishing scams. Also by using malicious software one gains access to the confidential information.

- **Individual**

Where a person illegally distributes that information which the law prohibits from publishing, like, distributing pornography. This sort also includes trafficking and stalking.

- **Government**

A crime against the government is called cyber terrorism. This includes crimes like hacking government websites, military websites or distributing propaganda. These criminals are usually terrorists or enemies from different nations. This crime is the most serious one, and its rate is presently very low in India.

The major types of cybercrimes prevalent in India are as follows:

- **Child pornography**

It is the publishing and distributing of obscene material of children in electronic form. Child pornography is a heinous crime that occurs. It has led to various other crimes such as sex tourism, sexual abuse of the child, etc.

The rates of this crime have increased over the years because of the access to internet being so easy. According to a report published in the Times of India in 2019, there has been a total of 10% rise in the cases of child pornography, including offences like rape and molestation, in 2018 as registered under the Protection of Children from sexual Offences Act (POCSO).

Mumbai police presented a report stating that between January 2015 and May 2019, a total of 4,551 such cases have been reported in Mumbai. The POCSO Act which includes crimes like rape, sexual assault, sexual harassment, child pornography comprises 33% off the total crime being committed against children. The maximum crimes under POCSO Act was recorded in Uttar Pradesh.

Relevant provisions under POCSO Act

After the amendment in the POCSO Act in 2012 several provisions have been amended to bring in stringent punishment against child pornography.

1. Section 4 and 5 have made penalties more stringent and has included death penalty as punishment for crimes like sexual assault of a child or performing penetrative sexual assault with a with.
2. Section 9 of the Act provides protection to children in time of natural calamities and where the children are made subject to injection of hormones or any other chemical substance to attain sexual maturity earlier than their age permits. This is done for the purpose of performing penetrative sex assault.
3. Section 14 and 15 impose penalties on those offenders who refrain from deleting or destroying those pornographic contents or reports which involves a child. They post it intentionally and then share it with others committing a crime against that child.

- **Cyber Stalking**

The growth in online sexual harassment has seen an increase in India. The harassment faced by women online, is the mirror image of the harassment faced by them in the real world. A survey conducted by Feminism in India states that 50% of women in major cities of India have faced online abuse. What is more shocking is that the instances of cyber stalking against men also show an increase. Experts have found the ratio of stalking of women and men to be 50:50.

- **Cyber terrorism**

Terrorism can be defined as, "*the unlawful use or threatened use of force or violence by a person or an organized group against people or property with the intention of intimidating or coercing societies or governments, often for ideological or political reasons.*"

Mark M. Pollitt defines cyber terrorism as, "*the premeditated, politically motivated attack against information, computer systems, computer programs, and data which results in violence against non-combatant targets by sub national groups or clandestine agents.*"

To have a clear definition of cyber terrorism is difficult as the scope of cybercrime is very broad, and sometimes involve more factors than just a computer hack.

Characteristics of Cyber Terrorism:

- Attack is predefined and the victims are specifically targeted.
- The attack made has an objective, to destroy or damage specific targets such as political, economic, energy, civil, and military structure.
- Attack may have an intention of opposing any religious group's information infrastructure to insight religious racket.
- Destroy enemy's capabilities to further operate within their own arena.

Major cases relating to cyber terrorism:

- ***Case 1***

The website of the Bhabha Atomic Research Centre (BARC) at Trombay was hacked in 1998. The hacker's gained access to the BARC's computer system and pulled out virtual data.

- ***Case 2***

In 2002, numerous prominent Indian web sites, notably which of the Cyber Crime Investigation Cell of Mumbai were defaced. Messages relating to the Kashmir issue were left on the home pages of these web sites.

- ***Case 3***

In the Purulia arms drop case, the main players used the internet extensively for international communication, planning and logistics.

- ***Case 4***

In 2007, the two Indian doctors involved in the Glasgow airport attack used computers for terrorists' activities.

- ***Case 5***

Former Indian President, Dr. A.P.J. Abdul Kalam has expressed concern over the free availability of sensitive spatial pictures of nations on the internet. He pointed out that the internet could be utilized

effectively for gathering information about the groupings of terrorists. According to him, earth observation by "Google Earth" was a security risk to the nation.

Q13. What is Money Laundering?

- **Money laundering**

When a person, the launderer, converts his illegal money into legitimate money, and thereby succeeds at hiding his illegally earned money, is said to have committed the crime of money laundering. In India "Hawala transaction" is the name given to the crime of money laundering. Money laundering has been defined under Section 3 of the Money Laundering Act, 2002.

They money launderers do their job in such a manner that not even the investigating agencies are able to trace the real source of the money. This is how people who invest their black money in capital market succeed at converting the black money into legitimate wealth.

The three major steps involved in money laundering are:

- **Investment**

As the first step, the launderers invest their illegal money into the black market via agent or banks in the form of cash. This is done either through formal or informal agreements.

- **Manipulating the details**

The second step is to hide the details of the real income of the launderer. In order to do so, the launderers, often deposits their money in the form of bonds, stocks, etc. into a foreign bank.They prefer to invest in those bank that does not reveal the identity or the details of the account holder. This helps in manipulating the information of the owner of the money and the details regarding the source of the money.

- **Making what is illegal, legal**

The final step is where the black money introduced into the market is finally converted into legitimate money and introduced into the financial world.

Cases of money laundering in India

1. BCCI (Board of Control for Cricket in India) was alleged to have laundered dollar 23 billion by introducing itself into the market of arms and drug smuggling.

2. In the case of *Anosh Ekka v. Central Bureau of Investigation*, Anosh Ekka was alleged to have been involved in money laundering as, after becoming the minister acquired a huge amount of movable and immovable assets in his name and in the name of his family within a short span of 3 years. The Supreme Court held the accused liable for looting and laundering huge amount of public wealth. He delayed the judgement and also manipulated the evidence against him. He was also accused of abusing the law making process and contempt on the justice delivery system.

3. In *Arun Kumar Mishra v. Directorate of Enforcement*, five people created a fake account in the Punjab National Bank (PNB), and thereby collected money as personal gains and caused huge loss to PNB. The money laundering case was not held in this case as the offence did not fall under any provision of the Prevention of Corruption Act. And under Article 20(1) of the Constitution of India, it has been said that ex-post facto laws have no effect. Under the said Article it is a fundamental right to not be prosecuted by a law that did not exist at the time of commission of the offence. However, the court said that once money laundering has been fully established against the petitioner, the Enforcement Directorate can initiate a fresh proceeding against him under the law which in force thereafter.

Q14. Write a note on Tax Evasion

- **Tax evasion**

Tax evasion is when a person deliberately forges his state of affairs in order for the authorities to levy less amount of tax. This can either be done by an individual, a corporation or a trust. It is a false means of escaping government taxes. In simple terms, Tax evasion and avoidance both is an offence which is used to reduce one's tax burden. The offence of tax evasion is punishable under Chapter XXII of the Income-tax Act, 1961, which can impose heavy amount of fine or even send you to jail.

Tax evasion= (amount of income that has to be reported) – (the actual amount reported)

Situations where one could be penalised for tax evasion

- **Failure to file income tax returns**

If a person fails to fulfil the requirement of filing the income tax returns as laid down under Section 139 (1) of the Income Tax Act, 1961, then a fine of rupees 5,000 or more could be imposed.

Parbodh Anand sold his flat which was registered in his own name. The buyer of the flat gave the amount in the name of both, Anand and his wife. Since the flat was registered only in Anand's name therefore the capital

gains that his wife had becomes taxable, which they did not pay and therefore landed up receiving a tax notice.

- **Not providing a PAN card or giving a fake one**

If a person does not provide a PAN (Permanent Account Number) to his employer, at the time of employment or provides a fake PAN number, then, he would be subject to a penalty of rupees 10,000.

The Economic Times had published a report stating that 4 men were arrested for running 6 fake firms who were in the racket of GST evasion amount to a total of 60 crore rupees. They were alleged to have used various fake documents, including fake PAN (Personal Account Number) cards. These fake firms have been able to generate 615 crore rupees which led to causing huge loss to the general public.

- **Giving false information under form 26AS**

Under Section 203AA of the income Tax Act, 1961 one is required to fill in Form 26AS. It is very important to look into the information which has been provided because any wrong information would lead to severe punishment. Similarly, one would be punished even if he/she has provided wrong information regarding income, expenses or investment.

Pursuant to the report published by the Economic Times it was found that around 15,000 crore rupees was tax exempted by the employers regarding the medical bills If an employee desirese tax-exempt reimbursements he is given Leave Travel Allowance and HRA by his employer. Those who have the bills or receipts of the same can only pay the sum. But those who didn't have the bills or receipts tend to use fake documents to get reimbursements.

- **Punishment for not paying self-assessment tax**

If a person fails to pay, either the entire sum or partial amount, self-assessment tax then under Section 140A (1) of the Income Tax Act, 1961, he would be considered as a defaulter. If not provided with a justified reason for the delay in payment, the assessing officer under Section 221(1) of the Income Tax Act, 1961, may impose a penalty.

In *Galaxy Nirmaan Pvt. Ltd. v. Acit, new Delhi* [12] The assessing officer had levied a penalty on the appellant in the case for non-payment of the self-assessment tax in the year 2010-11. A penalty of 1,09,71,691 rupees was imposed under Section 140A(3) of the Income Tax Act, 1961.

- Giving a wrong account of income to escape tax payment

Section 271(c) of the Income Tax Act, 1961 states that if a person conceals his real income in order to reduce the amount of taxes, he would be liable to 100% to 300% of the amount of the tax evaded by him. Section 271AAB lays down the different situations where the penalty would apply.

The article published on livemint talks about a case where a resident of Haryana was arrested for running racket where about 90 firms presented bogus invoices to evade taxes. The Directorate General of GST Intelligence (DGGSTI) found a total of 110 debit cards and blank cheque books linked to 173 bank account.

- **Keeping silence on the income tax notice**

The assessing officer, under Section 142(1) or 143(2), can issue a notice, asking the person to either file the return of income or asking the person to give all the details in writing, in case the person has failed to comply with the notice given to him by the Income Tax Department.

A Times of India report stated that: "Mridul stood shivering outside the magistrate court in Mumbai for he could have been given rigorous punishment for having defaulted on the notice given by the Income Tax Department for 30 days. The Notice was for not having deposited TDS which she had collected from the employee's salary.

Q15. Define Cellular Phone Fraud/E-Fraud/Computer Fraud in India.

- **Cellular phone fraud**

The Cellular phone fraud refers to tampering, manipulating or making an unauthorized use of cellular phones or service. The offender in this case would make a fake account in your name and get an access to your bank account details, credit card details, and make payments without your consent. The offender may even sell your cell phone to other criminals to use it in commission of illegal acts.

The use of the IMEI number of a mobile phone without taking the permission of the person who owns it is punishable with imprisonment for a maximum term of 3 years as laid down in the Mobile Device Equipment Identification Number, Rules, 2017. This provision has been made in combination of Section 7 and Section 25 of the Indian Telegraph Act, 1885. Where section 7 gives the DoT (Department of Telecom) the power to make rules for the conduction of telegraph and telecom services, section 25 says that any damages if caused to the telegraph lines, machines or any such equipment will be imprisoned for up to 3 years or fine or both.

According to an article published in the Business Standard the social media frauds, where crooks use stolen identities and credit card details to obtain illegal gains, have increased by 43% in 2018. Using mobile

applications, mostly whatsapp, facebook and instagram, to defraud people have seen a rise of 680% between 2015 and 2018.

This pose a threat to the online social media users and they need to be conscious and careful while using it. This calls for taking proper protection of one's account and credit card details while providing it online on a website.

- **Computer fraud**

When a computer is used to gain profits by defrauding people, it is called computer fraud. It is punishable under section 43 of the Information Technology Act, 2000. It penalizes the offender by asking him to pay compensation. It can be done via the internet, internet devices or internet services. The following activities amount to illegal use of computer- phishing, social engineering, DDoS, viruses, etc.

The various types of computer fraud are

- When a mail becomes widely circulated, ie. hoax mail, and thereafter is used by the crooks for illegal activities via computer.
- When a person tries to access or secure access to another's computer, computer system or computer network without his/her permission.
- Where the computer is used to download or copy or extract any data or computer database or information from a computer or its system or its network. The information or data under this head includes those data as well which is stored in the 'recycle bin' folder.
- When a person tries to damage or cause disruption to a computer, or the computer system or the computer network.
- Where a person tries to stop a person who has legal or authorized access to a computer from using a computer, or computer system or a computer network.
- Where a person assists another person in gaining access to another person to operate a computer or a computer system or a computer network.
- Whereby manipulating or tampering any computer, computer system or computer network., charges another person for the services availed.

- Where a person diminishes the value of the data by tampering or manipulating the computer, computer system or computer network.
- Where a person steals, conceals, destroys or alters or causes any person to steal, conceal, destroy or alter any computer source code used for a computer resource with an intention to cause damage.
- There can be computers in a company which can be accessed only by a few technical team members. If an employee who is not authorized to use it, uses it for personal gains by illegal means and he would be said to have committed a crime.
- When a person having complete knowledge of how the system of a computer works, tries to set patterns in data set without being authorized to do so by introducing in the system any spyware or malware he is said to have committed a white collar crime.
- The news of accounts getting hacked is very common. Hackers often hack account to gain access to personal information of the user and then using that information to do an illegal act.
- It is no big deal for computer experts to introduce in the system any virus that would disrupt its working and cause loss of data to the user.

Q16. Explain the Various Forms of White Collar Crimes?

- **Counterfeiting**

Counterfeiting is a criminal act defined under section 28 of the Indian Penal Code, 1860, where the imitation of something authentic takes place in order to steal, destroy or replace somebody's original work. This facilitates gaining profits from illegal transactions and deceiving a person who believes that the representation is made to him is true and the imitated work is of more value.

The crime of using counterfeiting is generally related to coins and currencies and is punishable under section 489B of the Indian Penal Code, 1860. In some cases, it also relates to imitating of products like clothes, bags, shoes, watches, art, toys, etc. Counterfeit products carry fake logos and brand names and in some products, harmful chemicals have also been found leading to the death of the person using it.

The cases of counterfeiting coins have experienced a serious rise in India. On 4th July 2019, three people were caught by the Special Task Force of Kolkata upon finding fake Indian rupees with them whose total face value

was rupees 6,50,000. In Rajkot, two people were caught recently with 1,080 counterfeit currency notes having a face value of 21.60 lakh, as per the Times of India report.

- **Extortion**

Extortion is a crime under section 383 of the Indian Penal Code, 1860. When one party coerces another party for payment of money, or property or services, he is said to have committed the crime of extortion. It is called a white collar crime because an officer may use his official right and make use of his higher position in the company to threaten another person for giving money, or transferring property, or for providing services.

The important elements which constitute the crime of extortion as laid down in the case of *People v. Fort* are:

- There should be a communication of demands by one party to another
- In order for the fulfilment of the demands, the other party or his family should be threatened to cause some injury
- There should be an intent to extort money from the other party for some advantage. The other party should be threatened to do or not to do something.

For example, David Letterman, an American television host, was extorted for a sum of $2 million in case of involvement in sexual relationships with female employees. The suspect, Robert Halderman, was later caught and punished.

In another case, a famous actress and model, Cindy Crawford and her husband became a victim of dollar 100,00 extortion case where their daughter's picture in which she was tied and gagged was to be revealed in the public if the couple did not adhere to the demands of the suspect.

- **Fake employment placement rackets**

There have been many cases where a student or a person looking for a job has been deceived by offenders who claim to provide placement or jobs to them and later on run away with the money they have taken as an advance to provide them with employment. Section 66D of the Information Technology Act, 2000 states the penalties to be imposed on a person for cheating on another person through personation using computer resources.

For example, Ajay Kolla, the CEO of Wisdom Jobs was arrested along with 13 other staffs in January, 2019 on the charge of false recruitment. Wisdom Jobs was an award-winning recruitment firm which was

established in the year 2009. Since then, Ajay Kolla had duped around 1.04 people, earning nearly 70 crore rupees out of fake placement promises as reported by the Economic Times.

- **Forgery**

Forgery, as defined under Section 464 of the Indian Penal Code, 1860, refers to the counterfeiting of checks or securities with the intention of defrauding the other person. It is very common in the accounting section of the company where the clerks or the staffs make false records and run away with company's money thereby causing loss to that company.

For example, in 2019, Ravi Prakash, CEO of TV9 News Channel, was removed from his post on the charge of forgery. Based on the ABCPL press note, NDTV in its report said that, Ravi Prakash in order to misguide the Registrar of companies, had forged the signature of the secretary of the company. It was also alleged that Ravi Prakash moved by self-interest and bad intention, had filed false cases against the new directors. He convinced the third parties to file false cases against the company, thereby, preventing the directors from carrying out their work.

White collar crime in other professions

- **White collar crime in medical profession**

The problem of the relationship between the doctor and the patient had been recognized long back by the penologists. Manu said that the ones indulging in false practices, for example, where a doctor makes false diagnosis report, heavy fine would be levied on him. Removing of immature fetus was considered to be a heinous crime and such person was called to be subject to severe punishment.

There have happened many cases where the medical practitioner have had no license to practice medical profession. The doctor treating the patient had turned out to be a fake doctor who has only deceive the patients by not treating them properly and running away with their money.

Examples of white collar crime in medical profession could be- issuing fake medical certificates, facilitating illegal abortions, selling sample drugs and medicines directly to the patients or to the chemists in India. Sometimes, the professionals in the medical field are seen giving advice to criminals of how to escape the allegations using medical grounds.

In Karnataka, two doctors, K.H. Jnanendrappa and K.M. Channakeshava, were charged with making fake medical certification for Abdul Karim Telgi, who was involved in a multi-crore stamp paper racket in order to

help him get bail on the ground of health issues. Therefore, under the Prevention of Corruption Act, 1988 they both were held liable with 7 years' imprisonment and with a fine of 14 lakh rupees each

- **White collar crime in legal profession**

Legal practitioners often for money or other services by their clients, present false evidence, fake witnesses in the court. Legal practitioners with the ministerial support involves in wrongful practices and violate all their ethical standards for some amount of money. Manipulating evidences and faking witnesses by bringing in professional witnesses, gives the case another turn, because of which many times the real accused is left free and the innocent is sent behind the bars.

It was in 2006 when D.K. Gandhi, a resident of Delhi filed a case against the wrong practices of his lawyer. Gandhi had appointed the lawyer for a certain amount of money. The lawyer was supposed to dispose off the case as early as was possible. The case was settled in the first hearing itself and Gandhi was to receive the compensation amount. However, the lawyer refrained from giving the amount to is client, Mr. Gandhi, unless an extra sum of 5,000 rupees was paid to him.

So in the case of *D.K. Gandhi v. M. Mathias* [10] when referring to the what the Supreme Court had said in *Jacob Mathew v. State of Punjab* [11], held the appeal and left the matter to be decided by the State Commission based upon the law.

In the case of Jacob Mathews, the Supreme Court had said that: *in law of negligence, the professionals from different professions like, legal, medical, or architecture, or any other would be held liable for negligence in practicing their profession if that either of the two given conditions are satisfied: a. He did not have the required skill that was needed to be professed and, b. Even if he has the required skills to be professed, he did not exercise the same.*

- **White collar crime in the engineering profession**

Engineers, like mining engineers, are often found to be involved in malpractices like providing substandard works and materials and also not maintaining the records or maintaining bogus records. These types of scandals are often reported on new channels and cause huge losses to the company.

In April 2019, India Today reported that an assistant engineer by the name of S.F. Kakulte was arrested for negligence because of which a bridge had collapsed. Along with Kakulte four other engineers and the chief engineers of Bombay Municipal Corporation were involved in the project. The Structural Auditor, Neeraj Desai, was also arrested for negligence in the report. He claimed that beams, pillars, metal fixtures were

audited but the concrete slabs were not mentioned in the inventory given to him for the audit as a result 6 people had died and 35 were seriously injured

- **White collar crime in education**

Many private educational institutions involve themselves in false practices like using fictitious documents to and fake details in order to obtain grants from the government to run their institutions. The teachers and staff are often seen to be working at very low wages than what was the signing amount. These false practices help the institution raise the high sum of illegal money.

It was in 2019 when the New India Express had reported that a senior railway ticket checking staff was arrested by the Central Crime Branch, for leaking out the questions papers of the exams for the post of constables and sub-inspectors in return for money.

It was in 2013 when the Time of India published an article stating that the Gujarat Technological College had been appointing engineers for lectureship were not even qualified with a B. Tech degree. Yogesh Patel, who was a lecturer of Civil Engineering at S.R. Patel Engineering College which is affiliated to Gujarat Technological University, had not even cleared his Bachelor's degree.

He had failed in some subjects like the applied mechanical and earthquake engineering. And he even went for checking papers and also received a remuneration for his work. An inquiry into how a person who is not eligible for the post of ad hoc, which is temporary, lectureship was appointed for teaching purposes.

Q17. What are the Major Causes for White Collar Crimes in India?

Causes for white collar crime in India

India is a country that are faced with various problems on a serious level, like that of starvation, illiteracy and health issues on a large scale. Moreover, India is the second largest populated country in the world, and administration of the mass becomes a problem. Despite having stringent laws, the administration often fails in implementing them, as keeping control such a large number of people becomes difficult. In such circumstances it is very likely for white collar crimes to flourish. The various other causes for the growth of white collar crimes in India are as follows:

1. The white collar crimes are committed by people who are financially secure and perform such illegal acts for satisfying their wants. These crimes are generally moved by the greed of the people.

2. Poverty is considered as a major cause for underdevelopment in India. Poverty is a cause for financial and physical duress among the major chunk of population. Since people are so much in need of money, they easily get attracted by the false representations made to them. They forget to look into the veracity of the representations being made to them.

3. The gravity of white collar crimes are more intense than other traditional crimes. White collar crimes causes one great loss at all levels, i.e. financial, emotional, etc. Corporate mishaps, like false pharmaceutical tests, costs more lives than the crime of murder.

4. With the advancement in technology, faster growth rate of industries and business, and political pressure have introduced the offenders to newer, easier and swifter methods of committing such crimes.

5. With the introduction of the people to the internet and digital world, where big transactions takes place within seconds and where reaching out people from all over the world is a matter of few minutes, criminals have got an incentive to commit more crimes and hide anywhere in the world.

6. Our law enforcement agency also become reluctant to deal with such crimes as these cases are very complicated and tracing a suspect is a difficult job. The investigation in case of white collar crimes is much more consuming than that in traditional crimes.

7. Even when the offender of the white collar crime has been caught, the judiciary fails to punish them. The major reasons behind the failure to hold these criminals accountable for their wrongful acts are:

- The legislators and the ones implementing the laws belongs to the same group or class to which the offender belongs and therefore land up assisting these criminals instead of taking actions against them.
- The investigating officers put in less effort in doing their job as they are not able to connect the small evidences that they get. And despite efforts they don't get major evidences in such cases as everything is done online and tracing things or person becomes difficult.
- We don't have laws on such types of crime and therefore offenders are left free. In many cases due to loopholes in law, it becomes favourable to the offenders.
- The existing laws do not provide stringent punishment that would prevent people from being involved in such types of crimes. The suspects do not have any incentive to not participate in these types of crime.

It is disappointing to know that despite white collar crimes being prevalent in the society and many people getting under its grip, no measures are being taken to prevent the commission of such crimes. The reason behind this is that white collar crimes are committed by influential people who enjoy higher social status.

Q18. Briefly Explain Historical Background and Emergence of White Collar Crimes in India.

The emergence of white collar crime in India

It is said that crimes have been taking place since the time human beings started living together. There are various crimes which have swept away with times and there are some which have found different dimensions to them with the society becoming modern. The ancient Vedic text says that the concept of white collar crime has existed in society from the very beginning.

The crime of bribery

- The concept of bribery is not a new concept in Indian society. References to these crimes can be found in the various sacred book.
- Narada had once said that if a man gives something out of fear, anger, lust, grief, in jest or by mistake or through a fraudulent act by a minor, or in an intoxicated state would be considered as a bribe.
- Yagnavalkya once had proposed that the king, the supreme authority, should kill the dishonest officer and reward the honest ones. He further adds that those people who will try to extort a person, their property would be confiscated and then transported.
- Kautilya in his Arthashastra has claimed that the functions of the ones in power will be monitored and in case of any negligence, they would be charged.

Health

The health of the people has always been a matter of concern for the people. In the ancient time also, to prevent an epidemic from breaking out, selling of dog's meat was made punishable. Yajnavalkya, Vijnaneswara and Kautilya proposed the different kinds of punishment one could be subject to if they get involved in the sale and purchase of dog's meat.

It was Ashoka who established hospitals for human beings and animals taking into consideration the health of the mass. In his edicts, Ashoka, warns people to not use meat as a food material and abstain from killing birds for food.

Using of false weights in stores

To keep the economy on the right track it is essential to refrain from wrongful market tactics. In ancient times, the shopkeeper often used false weights and measures to make profits. Kautilya said that in order to avoid such wrongful market practices by the shopkeeper there should be a supervising officer who would look into the transactions happening in the market. Kautilya along with Yajnavalkya had suggested the imposition of a fine in case one is caught practising wrongful tactics in the market.

Section 8(3) of the Legal Metrology Act, 2009 defines such offences which involve the use of false measures or weights other than the standard measure or weights required. Section 25 of the Legal Metrology Act, 2009 penalises the offenders with fine with may extend up to 25,000 rupees and for subsequent offences, the punishment shall imprisonment which may extend to a period of 6 months or with fine or both.

Counterfeit coins

The Indian economy was the first economy where coins were used as a medium of exchange. In ancient times it was the guild who was in charge in monetary matters. Coins were minted in silver, gold and copper which were manufactured under the control of the State authority. Kautilya introduced a rule which said that the one who counterfeits the coins would be penalised. He used the word 'Nanaka' for counterfeit coins and the ones who manufactured it was called 'Kutarupa Kara'.

Growth in the modern era

In India rapid industrialization after the First World War (1914 to 1919) led to a class divide. There existed two classes of people, the capitalist, the class owing the major means of production, or say the bourgeois institution and the proletariats or the working class. The extreme business condition with the fast growing economy led to the social exclusion of the proletariat class.

The high level of competitiveness and greed for enjoying monopoly led to the growth of criminalist behaviour. The seed of white collar crimes was planted by this time. Where the nation was busy in the freedom movement, and fighting war, these criminal acts grew up posing a threat to the growth of the Indian economy.

Courts and white collar crime in India

The white collar crimes have not been defined anywhere in the law, but there exists various legislations which imply the existence of such crimes. In the recent years with the emergence of new technologies and

advancement in different sectors, like the industrial sector, business sector, etc., these crimes have experienced a rapid growth.

We are well aware of the fact that more than 3 crore cases are pending before the Indian judiciary. In this case, it would be very difficult to dispose of the cases of white collar crimes as early as possible.

In order for faster disposal of the cases of white collar crimes, it is important that fast track courts and tribunals are set up in the country. Also, once the case would be decided as final by the tribunal or the fast track court, then, that decision would be binding on the parties. The parties would not be allowed to raise the same issues, in the same case again before another court.

Q19. Write a note on Crime Investigation in White Collar Crimes.

White collar crime investigation process

There has been a recent growth in the investigation process of white collar crimes in India. With the increase in the number of anti-corruption marches, the companies are experiencing an increase in a time-to-time investigation. These internal investigations acts as a watchdog against any unwanted activity. This further prevents the company from embarrassing raids. In India, there is no strict procedure which needs to be followed while conducting these internal investigation relating to the white collar crimes.

With the breakout of the **#MeToo** movement, companies have got an incentive to fasten their investigations in sexual harassment cases.

For example

1. When the CEO of ICICI Bank, Chanda Kochhar was facing charges of fraud, the bank resorted to internal investigation by Reserve Bank of India, Securities and Exchange Board of India and Central Bureau of investigation. To look into the matter an independent committee was set up which was headed by retired Supreme Court judge, Justice B.N. Srikrishna.

2. When Binny Bansal, Co-founder and group chief executive of Flipkart, was alleged for serious misconduct, the bank decided for an independent investigation which would be carried out on behalf of Flipkart and Walmart.

- **White collar crime investigation techniques**

There are a few basic techniques for the investigation of white collar crimes, and they are:

1. There should be an informant in the team who would give the first-hand information about a white collar crime taking place or had taken place in a company and keeps the investigating officers updated with all that was, is or will be going on in the company. Unless and until somebody informs the police about the crime, no investigation can take place. Therefore, the role of informants become important.
2. Involvement of undercover agents. The presence of undercover agents are important as they help in tracing those evidence which are not *prima facie* evidence. They also help in giving information regarding people who go underground and then commit serious offences. Since tracking such people is not possible by the police officers, they appoint undercover agents who without any hint to the accused gets all the details about him.
3. Introducing the examination of the physical evidence in the laboratory is very crucial for deciding a case. The medical evidences play a key role in giving a direction to a case. If not manipulated, then the medical tests are very efficient in determining who the accused would be in cases of serious offences, like rape.
4. Police officers are often seen conducting physical surveillance through dogs and electronic surveillance through CCTVs, or tracking call records, etc. These surveillance helps in tracking down even the smallest of evidence against the suspect.
5. Interrogation is that tool in the hands of the police which helps in taking out those information from the suspects which they would not have otherwise given.
6. Wiretapping where the law permits to do it helps in proving the guilt by way of producing call record in the court. In some cases, call records are sufficient evidence to hold a person guilty of an offence.

Q20. Briefly Explain the Legislation against White Collar Crime in India.

Legislation against white collar crime in India

There are several provision that exists for identifying white collar crime. Government in order to ensure that the criminal committing white collar crime be punished has brought in the following legislations-

1. The Companies Act, 1960
2. The Income Tax Act, 1961

3. Indian Penal Code, 1860
4. The Commodities Act, 1955
5. The Prevention of Corruption Act, 1988
6. The Negotiable Instrument Act, 1881
7. The Prevention of Money laundering Act, 2002
8. The Information Technology Act, 2005
9. The Imports and Exports (control) Act, 1950
10. The Special Court (Trial of offences relation to Transactions in Securities) Act, 1992
11. The Central Vigilance Commission Act, 2003

Punishment for fraud

Section 447 of the Companies Act, 2013 provides punishment against the commission of fraud. It states that in case a person is found guilty of an offence of fraud he would be imprisoned for a period not less than 6 months and which extend to 10 years. And he will also be subject to fine which should not in any case be less than the amount involved in fraud and which may extend to 3 times the amount involved in the fraud. In case the fraud has been committed against the interest of the general public than the term of imprisonment would not be less than 3 years.

Punishment for false statement

Section 448 of the Companies Act, 2013 states that: if a person deliberately makes a false statement, knowing it to be false or deliberately omits any material fact, knowing it to be material than he would be held liable for his wrongful act. This false statement can be made either through return, report, certificate, financial statement, prospectus, statement or any other documents required for the purpose mentioned under this Act or any rules made under it.

Punishment for furnishing false evidence

Section 449 of the Companies Act, 2013 provides for punishment for furnishing false evidence. It states that if any person gives a false evidence in a court of law:

- Either upon an examination on oath or solemn affirmation; or

- When any company is about to dissolve or otherwise also in case of any matter arising under this Act, in any affidavit, deposition or solemn affirmation,
- He shall be punished with imprisonment and fine both. The imprisonment will not be less than 3 years and may extend to 7 years and fine may extend to 10 lakh rupees.

Punishment when no specific punishment or penalty has been provided

Section 450 of the Companies Act, 2013 states that in case a punishment or penalty for a crime, which has been committed either by an officer of a company or by any other person who contravenes any of the provisions of this act, then under this section he would be penalized with a fine which may extend to 10 lakh rupees. In case the contravention continues the person would be asked to pay a fine which may extend to 1,000 rupees everyday till the intervention continues.

Punishment when the default has been repeated

Section 451 of the Companies Act, 2013 lays down that, when a company or any officer of that company commits an offence for which he has already been penalized and has also faced imprisonment, in case commits the same offence again within a period of 3 years, than that company and every one of those officers involved in the commission of the offence for the second time shall be punished with twice the amount of fine, in addition to the term of imprisonment provided in the act for that offence. But, in case the offence was committed after a period of 3 years of commission of the offence for the first time then this rule would not be applicable.

Appointment of adjudicating officers

Section 454 of the Companies Act, 2013 says that the Central Government, by an order stated in the official gazette, has the power to appoint an adjudicating officer who will have the right to adjudicate penalty under the provisions of this act. The Central Government will also decide the jurisdiction for the officers.

The adjudicating officer can impose a penalty on the company or its officers on the grounds of noncompliance with the given provision under the Act. In case an officer who has been penalised by the adjudicating officer is dissatisfied with his action, he could file an appeal to the regional director would be having jurisdiction in that matter.

Implications of white collar crime in India

The rate at which white collar crimes are increasing has become a matter of concern globally. It has been found that the detriment that white collar crimes cause to society is much more than other forms of crime.

Moreover, India is a developing nation and so an unprecedented increase in white collar crime hampers its image along with being a hazard in the growth of its economy.

Moreover, white collar crimes cause emotional traumas, not only to the victims of the crime but to the society at large. Where the victim is not able to bear the expenses of white collar crime that he had evidence, the society starts losing faith in the authorities. If the authorities at higher positions, who have enormous powers, start using it in a wrongful way, then who else will the citizens trust.

Also, as these crimes are flourishing all over the country, people don't find themselves secure anywhere, neither in the physical world nor in the virtual world. Where people were introduced to the digital world to avoid tiring jobs like standing in the queue to deposit or withdraw money from the bank and reduce other sorts of physical labour, it has not become the biggest platform for the commission of white collar crimes. Nowhere does the people find themselves safe.

Above all, despite several movements against the white collar crimes and instituting several rules and regulations via enchantments, the government has not been able to do much for the victims of the white collar crime. The complicated nature of the method of committing such crimes makes it difficult for the authority to find evidence. That is why many criminals move freely and this has become the main reason for the crime to flourish. The criminals don't find any incentive to commit such crimes which helps them make easy money.

Also one of the major reasons for such crimes to flourish is that media coverage of very few cases takes place in case of white collar crime. Often the media person and the offenders fall under the same group or class and stars favouring them instead of showing their reality to the people.

Moreover, people sitting at a higher position, who commits such crimes, buy the media persons or threaten them to close their channel, in order to stop the media coverage of their wrongful or illegal acts which they commit or have committed during the course of their occupation.

Q21. Explain the Recent white collar crime cases in India.

SEBI v. Burman Plantation and Others

Before the High Court of Allahabad, the learned counsel on behalf of SEBI claimed that the company is being wrongly accused as the company was not in a position to pay its debts, including payments to its investors. When the advertisement by the company was put to question, the council said that the advertisement was given in 2003 while the order was passed in 2004, when the company was not in a position to payback its debts.

Moreover, the sum of money which the investors were claiming was nowhere cited. The main claim of the counsel made the legislatures raise the punishment from 1 year to 10 years and also increased the fine which may now extend to 25 crores by amending the laws under section 24(1) of the SEBI Act. At last, Ravi Arora, the accused, was held liable.

Abhay Singh Chautala v. C.B.I.

There were two appellants in the present case against whom a charge sheet was filed for committing an offence under Section 13(1)(e) and 13(2) of the Prevention of Corruption Act, 1988 read with Section 109 of the Indian Penal Code, 1860 in separate trials. It was alleged that both the accused had accumulated disproportionate wealth as per their income when they were they members of the Legislative Assembly.

When the Central Bureau of Investigation (CBI) initiated its investigation it was found that the father of the appellant had acquired huge properties and same as the case with the appellants. The High Court held that the appellant had provided a totally different office(s) of the accused than they were actually holding at that time. Thus the sanction under Section 19 of the Prevention of Corruption Act, 1988 was held to be without any merit.

Binod Kumar v. State of Jharkhand & Others

This case was filed against several ministers of the State of Jharkhand along with the Chief Minister for having the possession of unaccountable money. The High Court had requested the Central Government to transfer the case from Enforcement Directorate to CBI by way of power given to it under Section 45 (1A).

It was alleged that the ministers were in possession of hefty amounts of money and though no evidence was found to charge them with money laundering case, a strict investigation was proposed.

The ministers were said to be the owners of property not only in India but abroad as well. Therefore, the court asked for an investigation to determine this wealth was acquired by making use of the official position. It was to be clarified if a white crime has been committed under the Prevention of Corruption Act, 1988 and under the Indian Penal Code, 1860.

The CBI started its investigation under Prevention of Corruption Act, 1988 and the Indian Penal Code, 1860 as the power to carry on investigation under Prevention of Money Laundering Act was only with the Enforcement Directorate, which is of course subjected to the power given to the Central Government under Section 45 (1-A) of the Prevention of Money-laundering act.

Q22. What are the Measures to curb white collar crimes in India?

The measures that can be adopted to prevent the commission of white collar crimes are:

1. The top investigating agencies of the country like the Central Bureau of Investigation, the Enforcement Directorate, the Income-tax Department, The Directorate of Revenue Intelligence and the Customs Department, needs strengthening, by way of implementing strong regulating policies. The Central Vigilance Commission should monitor the working of the officials sitting at top positions and also cross-check their works, so as to ensure transparency in the system.
2. As the method of commission of such white collar crimes is advancing, so should the training of the investigating officials. It often happens that ageing officers are well experienced to understand the nature and techniques, but are not able to utilise the technology for tracking the suspect. This happens due to lack of training. So, every investigating officer must be trained in such a manner that, no matter how complicated the case is, they would be able to easily resolve it.
3. To uproot the existence of such crimes, it is very important to include strict laws into the system. Less amount of fine and shorter period of imprisonment makes it very casual for the offenders to commit such crimes.
4. Fast track courts and tribunals should be set in all the parts of the country for the early disposal of these cases. The tribunal should be provided with the power to fine or imprison someone who has been held guilty. Such measures would lower the rates of occurrence of white collar crimes.
5. The electronic and print media should be utilized in the right way to spread awareness about white collar crimes. The general people need to be aware of such crimes and that they are taking place everywhere, from a small cafe to big multinational companies. Also, they need to be aware of the remedies they could seek in case they become victim to such crimes.
6. Stringent laws and hefty fine and long term imprisonment should be given to the offenders for committing such crimes. And for this to happen, the Indian Penal Code, 1860 should be amended and include provisions for the white collar crimes. For example, the IPC could have a separate chapter dealing with white collar crimes.
7. The government may establish a separate body which would look into the matter of crimes and criminality prevailing in the country. The independent body could be named as the National Crime Commission. Since their entire work would be related only to the crimes and would be an independent body, it could work more efficiently towards reducing criminality in the country.

Conclusion

White collar crimes have two surprising features, first, that they are non-violent crimes, though the criminals have the tendency to gain control or have a sense of entitlement, and, second, that they are committed by people in the higher profession.

However, these crimes are also committed by poorly paid underlings, although the mastermind behind the commission of such crime could be a rich person enjoying a higher social status in his occupation. White collar crimes are often committed because of peer pressure or are dependent on the culture of the company.

As our society is growing towards modernity and the world is experiencing new technological advancement, the rate of crime is also increasing at a faster rate. Particularly the growth in white collar crimes has been enormous. From the medical profession to educational institutions, these crimes are being committed everywhere.

The cases of online fraud are also increasing at an alarming rate. India, as a developing nation, has faced difficulties in leading its economy towards growth because of these crimes in general and corruption in particular.

The investigating officials are in need of training where they could acquire the skill to trace these criminals, otherwise tracking of whom is difficult, complicated and tiresome job. The investigating officials' work should be scrutinized to ensure transparency in the work as the white collar crimes are committed by people enjoying higher social status in their occupation.

The government must make laws that are strict enough to reduce the commission of such crimes. And the system should be such that not only there exist laws giving strict punishment to the accused but also dispose off maximum cases in a short while. If not done so then people will soon lose complete faith in the system, as these crimes are committed by people who should act as a role model for the society.

The media has a key role to play in reducing the rate of increasing white collar crimes. It has been noted that most of the white collar crimes go unreported. So, if the media becomes more active towards publishing frauds and scams at higher levels and revealing how do the people at higher position in a company use their powers arbitrarily, and also make efforts in making people aware about the white collar crimes, and avoid corrupt practices, then this would definitely help in reducing the rate at which the white collar crimes are being committed.

Q23. Critically examine the impact of Police Deviance.

POLICE DEVIANCE

Police work by its very nature involves the slippery slope (the potential for gradual deterioration of social-moral inhibitions and perceived sense of permissibility for deviant conduct). In fact, the whole unspoken "dark" side of criminal justice work involves putting up with conditions that are at less than usual comfort levels; i.e., "slumming it".

Police are routinely involved in undercover work which involves taking on false identities and inducing crime. Police are allowed to make false promises to hostage takers and kidnappers. Police feed disinformation to the media. Police are trained to be deceptive at interviewing and interrogation. Police make all kinds of excuses to get out of nuisance calls. Police trade or sell their days off and desirable work assignments. Police angle themselves into cases requiring court appearances and manipulate the overtime system to earn an average of $5000 more a year. Police strain the truth to protect loved ones and crime victims. Police routinely invade privacy via surveillance and other technological means. Police fighting the drug problem may encounter more loose cash than the gross national product of some small countries. And as with sting operations, there's something that's just plain sick about a system that condones the police making a product, selling the product, and then arresting people for buying the product.

Police deviance is a much broader term than corruption. It includes all activities which are inconsistent with norms, values, or ethics (from a societal standpoint or even from the police standpoint). A theorem in criminology is that it's always fruitful to study when people not only break society's norms, but the norms of their own social group too. The following definitions may be helpful:

- Deviance — behavior inconsistent with norms, values, or ethics
- C– forbidden acts involving misuse of office for gain
- Misconduct — wrongdoing violations of departmental procedures
- Favoritism — unfair "breaks" to friends or relatives (nepotism)

Although this lecture is about deviance, it might be useful to take a brief look at a couple of these other terms. Corruption is criminal conduct that can involve under using one's authority, overusing one's authority, or profiteering via one's authority. The key element is misuse of official authority; the gain can be personal or for the common good. Corruption is bad because it undermines integrity, the state of policing being whole or

undivided. Corruption has been the target of numerous efforts at creating topologies. Here are three of the most popular topologies of corruption:

Police misconduct is impropriety of office, not misuse of authority. It's wrongdoing, the appearance of wrongdoing, or puzzling behavior that violates standards usually set down in departmental policies and procedures, for good reasons, that the employee may or may not be cognizant of. Misconduct is bad because it leaves the public free to speculate and draw sweeping generalizations about the profession of policing as a whole. The different types of misconduct are often classified as follows:

- Malfeasance — intentional commission of a prohibited act or intentional unjust performance of some act of which the party had no right (e.g., gratuity, perjury, use of police resources for personal use)
- Misfeasance — performance of a duty or act that one is obligated or permitted to do in a manner which is improper, sloppy, or negligent (e.g., report writing, unsafe operation of motor vehicle, aggressively "reprimanding" a citizen, improper searching of suspect)
- Nonfeasance — failure to perform an act which one is obligated to do either by law or directive due to omission or failure to recognize the obligation (e.g., failure to file report, improper stop & frisk, security breach)

THE MYTH OF THE ROTTEN APPLE

According to the Knapp Commission, which blew the whistle on the standard police explanation for corruption (he/she's a rotten apple in an otherwise clean barrel), "rotten apples" are either weak individuals who have slipped through the screening process or succumbed to the temptations inherent in police work or deviant individuals who continue their deviance in an environment that gives them ample opportunity. Police departments tend to use the rotten apple theory or some variation of the "rogue cop" story to minimize the public backlash against policing after every exposed act of corruption.

A functional explanation may be closer to the truth, and is indeed supported by almost every scholarly observer on the subject. A functional explanation is that corruption is inherent in society's attempt to enforce unenforceable laws. Another approach is the "occupational socialization" explanation, the polar opposite of rotten apple theory that is sometimes called "rotten barrel" theory. According to this view, the very structure of policing (exposure to unsavory characters, forgetting what you learned in the academy, clannishness, and overzealous, misguided approaches to crime control) provides plenty of opportunities to learn the entrenched patterns of deviant police conduct that have been passed down thru generations.

TYPES OF POLICE DEVIANCE

POLICE GRATUITY

A gratuity is the receipt of free meals, services, or discounts. Nonfederal police usually do not regard these as forms of corruption ("not another lecture on the free cup of coffee or police discount"). These are considered fringe benefits of the job. Nevertheless, they violate the Code of Ethics because they involve financial reward or gain, and they are corruption because the officer has been placed in a compromising position where favors (a "fix") can be reasonably expected in the future. When there is an implied favor (a "wink and nod"), it's called "mooching". When the officer is quite blatant about demanding free services, it's called "chiseling".

Gratuities often lead to things like kickbacks (bribery) for referring business to towing companies, ambulances, or garages. Further up the scale comes pilfering, or stealing (any) company's supplies for personal use. At the extreme, opportunistic theft takes place, with police officers skimming items of value that won't be missed from crime scenes, property rooms, warehouses, or any place they have access to. Theft of items from stores while on patrol is sometimes called "shopping."

POLICE SHAKEDOWNS

A shakedown is when the police extort a business owner for protection money. The typical scenario involves gay bars, which are considered the most vulnerable. In some cities (like Boston for example), police are still charged with the power to inspect bars for compliance with liquor regulations. Officers are then in a position to threaten bar owners with violations if they do not make payoffs, and promise to intercept ("fix") any other violation reports processed through department channels. In other cities (like San Francisco, for example), officers would promise extra protection against gay-bashing in return for extra payments. In still other cities (like New Orleans, for example), moonlighting officers would make extra money from "details" in liquor establishments, and be paid extra for overlooking open sex or drug violations. In some cities, police officers have complete control over liquor licenses and even own nearby parking meters. To deal with the gay bar issue, many police departments have tried hiring openly gay recruits.

Shakedowns are also common with strip bars, prostitution rings, drug dealing, illegal gambling, and even construction projects. In each case, the approach and modus operandi are somewhat variable, because each officer subjects the business operator and/or patrons to the shakedown differently.

POLICE PERJURY

This is usually a means to effect an act of corruption, leaving out certain pertinent pieces of information in order to "fix" a criminal prosecution. "Dropsy" evidence is typical, where the officer testifies untruthfully that he/she saw the offender drop some narcotics or contraband. Lies that Miranda warnings have been given, when they haven't, are also typical. Lying in court is called "testifying", and police can do it coolly; they're trained witnesses.

Other actors in the system, supervisors and even judges, are often aware of the perjury. They pretend to believe police officers who they know are lying. Everybody's happy with the system. The cop gets credit for a good bust; the supervisor's arrest statistics look good; the prosecutor racks up another win; the judge gets to give his little lecture without endangering his reelection prospects, the defense lawyer gets his fee in dirty money, and the public is thrilled that another criminal is off the street (Dershowitz 1996). Most perjury is committed by decent cops who honestly believe a guilty defendant will go free unless they lie about something.

POLICE BRUTALITY

Police brutality has been defined as excessive force, name calling, sarcasm, ridicule, and disrespect (President's Commission 1967). Other commissions have simply used a vague definition as "any violation of due process". Kania and Mackey's (1977) widely-regarded definition is "excessive violence, to an extreme degree, which does not support a legitimate police function." When a citizen charges police brutality, they may be referring to a number of things, including:

- profane or abusive language
- commands to move or go home
- field stops and searches
- threats of implied violence
- prodding with a nightstick or approaching with a pistol
- the actual use of physical force

Only the last one of these (*unreasonable and unnecessary* actual use of physical force) can be considered police brutality. This is commonly expressed as "more than excessive force". Police perjury and police brutality go hand in hand, as officers who commit brutality will most likely lie on the stand to prevent the possibility of a lawsuit or departmental charges. The reasons why an officer might engage in this kind of conduct are many:

- a small percentage may have been attracted to police work for the opportunity to enjoy physically abusing and hurting somebody
- an officer may come to believe "it's a jungle out there"
- an officer may be provoked and pushed beyond their endurance

The most common reason is occupational socialization and peer support. One common belief is that it's necessary to come down hard on those who resist arrest because they may kill the next police officer who tries to arrest them (so you have to teach 'em a lesson). Another practice is the "screen test", police jargon for applying the brakes on a police vehicle to that the handcuffed prisoner in back will be thrown against the metal protective screen.

Criminal justice experts are divided over whether racial differences exist with respect to police use of force (Weisburd et. al. 2000). On the one hand, the Christopher Commission (1991) stated that white officers were somewhat more likely to use excessive force against African-Americans, and watchdog groups like the ACLU, Amnesty International, and Human Rights Watch have stated a pattern exists, but on the other hand, respected researchers like Adams (1996) and Tonry (1995) as well as the U.S. government itself have never unveiled a pattern.

POLICE PROFANITY

There are many reasons why a police officer would use obscene and profane language. Effective use of verbal communication is one of the skills expected in police work. Concepts such as "command voice" and "command presence" are routinely taught at police training academies. The FCC specifically condemns certain words on radio and television that are "patently offensive", but there's no such mechanism for determining what's offensive with interpersonal communication. The following topology exists:

- words having religious connotations (e.g., hell, goddamn)
- words indicating excretory functions (e.g., shit, piss)
- words connected with sexual functions (e.g., fuck, prick)

Generally, words with religious connotations are considered the least offensive and words connected with sexual functions are considered the most offensive. It's commonly the case, however, that use of such language by police officers is purposive and not a loss of control or catharsis.

- to gain the attention of citizens who may be less than cooperative

- to discredit somebody or something, like an alibi defense
- to establish a dominant-submissive relationship
- to identify with an in-group, the offender or police subculture
- to label or degrade an out-group

Of these, the last is of the most concern, since it may reflect the transition of prejudice to discrimination, especially if racial slurs or epithets are involved. On the other hand, profanity for innocuous purposes may very well be something that it is unrealistic to expect will go away in policing or many other contexts.

POLICE SEX ON DUTY OR DUTY-RELATED

Contacts with promiscuous females and minimal supervision are part of the job. Sooner or later, every police officer will be propositioned. There are a number of women who are attracted to the uniform or the aura of the occupation. Every police officer will be able to tell you stories about police "groupies". These are women who make the rounds by waving at officers, getting them to stop or pull over, and then set up meetings to have sex with them, or sometimes right then and there. A woman such as this typically has sex with whole departments and hundreds of police officers. Other situations involve:

- traffic stops — to get a closer look at the female or information about her
- fox hunting — stopping college girls to get the I'll do anything routine
- voyeurism — window peeping or interrupting lovers lane couples
- victim re-contacts — consoling victims who have psychological needs
- opposite sex strip searches — touching and/or sex with jail inmates
- sexual shakedowns — letting prostitutes go if they perform sex acts

On occasion, one hears about "rogue" officers who coerce women into having sex on duty, "second rapes" of crime victims, and school liaison officers involved with juvenile females, but such instances are rare because of the penalties involved. When police sex cases come to the public attention, the department reaction is usually to reemphasize the code of ethics. Such was the case in the 1985 Rathskellar incident in San Francisco, where at a police academy graduation party, one bashful recruit was handcuffed to a chair, and a prostitute was brought in to perform oral sex on him.

POLICE SLEEPING ON DUTY

On the night shift, the police car is sometimes referred to as the "traveling bedroom". In police argot, a "hole" or "coop" is where sleeping takes place, typically the back room of someplace the officer has a key to and can engage in safe "cooping". Police officers who attend college during the day or moonlight at other jobs in order to make a decent living are often involved in this kind of conduct. Numerous court appearances during the day can also be a factor, along with the toll of shift work.

Sleeping on duty, of course, is just an extreme example of goldbricking, the avoidance of work or performing only the amount minimally necessary to satisfy superiors. Goldbricking can take many forms: from ignoring or passing on calls for service to someone else; overlooking suspicious behavior; or engaging in personal business while on duty.

POLICE DRINKING & ABUSING DRUGS ON OR OFF DUTY

There are endless opportunities to drink or take drugs while on duty (e.g., victim interviews, shakedowns, contraband disposal), and the reasons for it are many: to get high, addiction, stress, burnout, or alienation from the job. However, even in cases of recreational usage (which doesn't exist, since officers are never off-duty or have any of their "own time"), the potential is there for corruption. The officer must obtain the drugs from some intermediary, involve others in transactions, and open the door to blackmail, shakedowns, rip-offs, and cover-ups. It sets a bad example for public relations. Alcohol and drug use tends to become a systemic problem; others become involved, either supporting or condemning the user. Alcohol and drugs tend to be mixed by police officers because there's more sub cultural support for alcoholism; thus the abuser covers up the drug use with alcoholism.

More intriguing is when the police become sellers or dealers of drugs. One occasionally hears stories of officers selling drugs at rock concerts. The motivation here appears to be monetary gain and greed, although there have been some attempts to claim stress or undercover assignment as a defense. In cases were such officers have been disciplined, plea bargained, or arbitrated, the courts have not upheld a job stress/drug connection, although there is some precedent in rulings that job assignment may be a factor in alcoholism.

With the exception of a few places (like Hawaii), police officer associations (POAs) have opposed random drug testing. They especially oppose drug testing after a shooting incident because it taints the officer. They are not generally opposed to drug testing of applicants or probationary employees. They do, of course, support strict discipline of any employee who is involved in dealing drugs.

Q24. Explain the relevance of Lokpal and Lokayukta Institutions in India.

Lokpal and Lokayuktas under the Lokpal and Lokayukta Act, 2013

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Introduction

Maladministration is like a termite that slowly erodes the foundation of a nation. It hinders administration from completing its task. Corruption is the root cause of this problem that our country faces. Though there are many anti-corruption agencies in India, most of these anti-corruption agencies are hardly independent. Even the CBI has been termed as a "caged parrot" and "its master's voice" by the Supreme Court of India.

Many of these agencies are only advisory bodies with no effective powers to deal with this evil of corruption and their advice is rarely followed. There also exists the problem of internal transparency and accountability. Moreover, there is not any effective and separate mechanism to maintain checks on such agencies.

In this context, an independent institution of Lokpal and Lokayukta has been a landmark move in the history of Indian polity which offered a solution to the never-ending menace of corruption. It provides a powerful and effective measure to counter corruption at all levels of the government.

What are Lokpal and Lokayuktas?

The Lokpal and Lokayukta Act, 2013 mandated for the establishment of Lokpal at the Union level and Lokayukta at the State level. Lokpal and Lokayuktas are statutory bodies and these do not have any constitutional status. These institutions perform the function and role of an "Ombudsman" (an official appointed to investigate individuals' complaints against a company or organization, especially a public

authority). They inquire into allegations of corruption against certain public bodies/organizations and for other related matters.

Origin and History

The story of the Lokpal and the Lokayukta has a long story. Lokpal and Lokayukta is not Indian origin concept. The concept of ombudsman originated in 1809 with the official inauguration of the institution of Ombudsman in Sweden. Later in the 20th century, after the Second World War, the institution of ombudsman developed and grew most significantly. Countries like New Zealand and Norway also adopted the system of ombudsman in the year 1962. This system proved extremely significant in spreading the concept of ombudsman to other countries across the globe.

Great Britain adopted the institution of the Ombudsman in the year 1967, on the recommendations of the Whyatt Report of 1961. Through the adoption of such a system, Great Britain became the first eminent nation in the democratic world to have such an anti-corruption institution. After great Britain, Guyana emerged as the first developing nation to adopt the concept of the ombudsman in the year 1966. Subsequently, this concept was further adopted by Mauritius, Singapore, Malaysia, and India as well.

In India, the former law minister Ashok Kumar Sen became the first Indian to propose the concept of constitutional Ombudsman in Parliament in the early 1960s. Further, Dr. L. M. Singhvi coined the term Lokpal and Lokayukta. Later in the year 1966, the First Administrative Reform Commission passed recommendations regarding the setting up of two independent authorities at the central and at the state level. According to the commission's recommendation, the two independent authorities were appointed to look into complaints against public functionaries, including members of Parliament as well.

After the recommendations from the commission, the Lokpal bill was passed in Lok Sabha in 1968 but lapsed due to the dissolution of Lok Sabha. Since then, the bill was introduced many times in Lok Sabha but has lapsed. Till 2011 as many as eight attempts were made to pass the Bill, but each of them failed.

Before 2011, a commission, headed by M.N. Venkatachaliah, was also set up, in the year 2002 to review the working of the Constitution. This Commission recommended the appointment of the Lokpal and Lokayuktas. The commission also recommended that the Prime Minister ought to be kept out of the ambit of the Lokpal. Later in 2005, the Second Administrative Reforms Commission chaired by Veerappa Moily came up with the recommendation that the office of Lokpal needs to be established without delay.

Though all these recommendations were never given the due preference, the government in 2011 formed a Group of Ministers, chaired by the former President Pranab Mukherjee. These groups of ministers worked to examine the proposal of a Lokpal Bill and to suggest measures to tackle corruption.

Not only the administration and the government but even the people of India felt the need for such a system to be introduced into the Indian governance system. India rose into a nationwide protest for Lokpal. The "India Against Corruption" movement was led by Anna Hazare to exert pressure on the United Progressive Alliance (UPA) government at the Centre.

The protests and the movement resulted in the passing of the Lokpal and Lokayuktas Bill, 2013, in both the Houses of Parliament. The bill received assent from President on 1 January 2014 and came into force on 16 January 2014 under the name "The Lokpal and Lokayukta Act 2013".

Lokpal and Lokayukta Amendment Act, 2016

After the introduction of the Lokpal and Lokayukta Act 2013, a bill was passed by Parliament in July 2016 which amended the Lokpal and Lokayukta Act, 2013. This amendment enabled the leader of the single largest opposition party in the Lok Sabha to become a member of the selection committee in the absence of a recognized Leader of Opposition.

This bill also amended Section 44 of the Lokpal and Lokayukta Act 2013. Section 44 of the Act dealt with the provisions of furnishing of details of assets and liabilities, within 30 days of joining the government service, of any public servant. This amendment replaced the time limit of 30 days. It stated that the public servants will make a declaration of their assets and liabilities in the form and manner as prescribed by the government.

In the case where any non-governmental organization receives funds of more than Rs. 1 crore from government or receives foreign funding of more than Rs. 10 lakh then the assets of the trustees and board members were to be disclosed to the Lokpal. The bill provided an extension to the time limit given to trustees and board members to declare their assets and those of their spouses.

Structure of the Lokpal

Let us try to understand the structure of the Lokpal. Lokpal is a multi-member body consisting of one chairperson and a maximum of 8 members. The person to be appointed as the chairperson of the Lokpal must be either:

1. The former Chief Justice of India; or
2. The former Judge of the Supreme Court; or

3. An eminent person with impeccable integrity and outstanding ability, who must possess

Special knowledge and a minimum experience of 25 years in matters relating to:

1. Anti-corruption policy;
2. Public administration;
3. Vigilance;
4. Finance including insurance and banking;
5. Law and management.

- The maximum number of members must not exceed eight. These eight members must constitute:
- Half members to be judicial members;
- Minimum 50% of the Members should be from SC/ ST/ OBC/ minorities and women.
- The judicial member of the Lokpal must be either:
- A former Judge of the Supreme Court or;
- A former Chief Justice of the High Court.

The non-judicial member of the Lokpal needs to be an eminent person with flawless integrity and outstanding ability. The person must possess special knowledge and an experience of a minimum of 25 years in matters relating to:

- Anti-corruption policy;
- Public administration;
- Vigilance;
- Finance including insurance and banking;
- Law and management.

Term and appointment to the office of Lokpal

Lokpal Chairman and the Members can hold the office for a term of 5 years or till they attain the age of 70 years, whichever is earlier. The members and the chairman of Lokpal are appointed by the president on the recommendation of a selection committee.

The selection committee consists of:

- The Prime Minister of India;

- The Speaker of Lok Sabha;
- The Leader of Opposition in Lok Sabha;
- The Chief Justice of India or any Judge nominated by Chief Justice of India;
- One eminent jurist.

The Prime Minister is the Chairperson of the selection committee. The selection of the chairperson and the members is carried out by a search panel of at least eight persons, constituted by the selection committee.

Lokpal search committee

As per the Lokpal Act of 2013, the Department of Personnel and Training needs to create a list of candidates who are interested to become the chairperson or members of the Lokpal. The list was then to be presented to the proposed eight-member search committee. The committee on receiving the list shortlists the names and place them before the selection panel, headed by the Prime Minister.

The selection panel has discretion in selecting the names from the list presented by the search committee. In September 2018, a search committee was constituted by the government which was headed by former Supreme Court judge Justice Ranjana Prakash Desai. The Lokpal and Lokayukta Act of 2013 also mandates that all states must set up the office of the Lokayukta within one year from the commencement of the Act.

Jurisdiction and powers of Lokpal

The Jurisdiction of Lokpal extends to:

- Prime Minister, Ministers,
- Members of Parliament,
- Groups A, B, C and D officers,
- Officials of Central Government.

The Jurisdiction of the Lokpal extends to the Prime Minister, except in the cases of allegations of corruption relating to:

- International relations;
- Security;
- The public order;
- Atomic energy and space.

The jurisdiction of the Lokpal does not include ministers and members of Parliament in the matter relating to:

- Any speeches delivered in the Parliament or;
- For a vote cast in the Parliament.

Lokpal's jurisdiction also includes:

- Every person who is or has been in charge (director/ manager/ secretary) of a body or a
- society set up by the act of central government,
- Any society or body financed or controlled by the central government,
- Any person involved in act of abetting,
- Bribe giving or bribe-taking.

The Lokpal and Lokayukta Act states that all public officials need to furnish their assets and liabilities as well as their respective dependents. The Lokpal also possesses the powers to superintendence over the CBI. It also has the authority to give direction to CBI. If a case is referred to CBI by the Lokpal, then the investigating officer in such a case cannot be transferred without the prior approval of the Lokpal. The powers of a civil court have been vested with the Inquiry Wing of the Lokpal.

The Lokpal also possesses powers regarding the confiscation of assets, proceeds, receipts, and benefits arisen or procured by means of corruption in special circumstances. It also has the power to make recommendations regarding the transfer or suspension of public servants connected with the allegations of corruption. Lokpal is capable of giving directions to prevent the destruction of records during the preliminary inquiry.

Limitations

The institution of Lokpal came up as a much-needed change in the battle against corruption. The Lokpal was a weapon to curtail the corruption that was spreading in the entire administrative structure of India. But at the same time, there are loopholes and lacunae which need to be corrected. The appointing committee of Lokpal consists of members from political parties that put Lokpal under political influence.

There are no criteria to decide who is an 'eminent jurist' or 'a person of integrity' which manipulates the method of the appointment of Lokpal. The Lokpal and Lokayukta Act 2013 failed to provide any kind of concrete immunity to the whistleblowers. The provision related to the initiation of inquiry against the complainant, in cases where the accused is found innocent, leads to discouraging people from making complaints. One of the biggest lacunae is the exclusion of the judiciary from the ambit of the Lokpal.

The Lokpal does not have any constitutional backing. Also, there are no adequate provisions for appeal against the actions of Lokpal. The states have complete discretion with respect to the specific details in

relation to the appointment of Lokayukta. The need for functional independence of the CBI has been catered to some extent, by the change brought forth in the selection process of CBI's Director, by the Lokpal and Lokayukta Act.

The Lokpal and Lokayukta Act also mandates that no complaint against corruption can be registered after a period of seven years from the date on which the mentioned offense is alleged to have been committed.

Conclusion

In order to tackle the problem of corruption, the institution of the ombudsman should be strengthened both in terms of functional autonomy and the availability of manpower. The appointment of Lokpal in itself is not enough. The government should address the issues based on which people are demanding a Lokpal. Merely adding to the strength of investigative agencies will increase the size of the government but not necessarily improve governance. The slogan adopted by the government of "less government and more governance", should be followed in letter and spirit.

Moreover, Lokpal and Lokayukta must be financially, administratively and legally independent of those whom they are called upon to investigate and prosecute. Lokpal and Lokayukta appointments must be done transparently so as to minimize the chances of the wrong sorts of people getting in. There is a need for a multiplicity of decentralized institutions with appropriate accountability mechanisms, to avoid the concentration of too much power in any one institution or authority.

Q25. Critically examine N.N.Vohra Committee Report on Bombay Blast incident.

On Friday, Advocate Ashwini Kumar Upadhyay filed a writ petition in the Supreme Court seeking concrete action on the Vohra Committee Report submitted in 1993, thereby opening a can of worms. The NN Vohra committee was set up after the 1993 Mumbai blasts in a bid to take stock of the nexus developed over the years between mafia organizations and politicians as well as government functionaries.

According to the reports, the petitioner has sought the apex court to direct various authorities to make Vohra committee report public and also reveal the names of the criminals, politicians and public servants who were in involved with the underworld mafia in Mumbai.

The petitioner stressed that the citizens have a right to know about the complete Vohra report to ensure transparency in governance and there was a need to make the report public as there is tangible evidence against politicians, criminals and civil servants.

Advocate Upadhyay also pointed out that an incomplete version of the report spanning over 100 pages was tabled in the Parliament in 1995, leading to doubts over its genuineness. Only 11 pages of the report were made public and the rest was kept classified.

The petitioner also mentioned that no follow-up action has been initiated in the last 27 years while adding that the report had recommended a Nodal Cell to be set up with powers to take stringent action against crime syndicates. Moreover, he also called for special courts to be set up to expeditiously try such all cases referred to in the Vohra report.

According to him, it was possible for the SC to address the "systemic problem" of criminalization of politics without breaching the principle of separation of powers.

In his petition, Upadhyay sought a direction to the Home Secretary to handover a true copy of the Vohra Committee Report along with annexures and notes to the NIA Director, CBI Director, ED Director, IB Director, SFIO Director, RAW Director, NCB Director, CBDT Chairman and Lokpal Chairperson.

NN Vohra report on Crime syndicate and nexus between underworld and political class

The committee, headed by the then Union Secretary Home Secretary NN Vohra, was set up by the PV Narasimha Rao government in 1993 to examine the link between crime syndicates and government functionaries and political personalities. The committee that had members from RAW, the Intelligence Bureau as well as the CBI had unanimously expressed an opinion that during the 1993 bomb blasts, the criminal network in Mumbai was virtually running a parallel government.

The NN Vohra committee submitted its report to the Ministry of Home Affairs (MHA) on 5 October 1993, three months after it was established on 9 July 1993 in the aftermath of the 1993 Bombay bomb blasts. In a startling disclosure, the report had allegedly mentioned that many Congress leaders, who were in influential positions in Maharashtra and Gujarat in the 1990s had developed close relations with underworld don Dawood Ibrahim and his henchman Iqbal Mirchi.

The contents of the report were subsequently made public on 1 August 1995 in Parliament but only limited to 11 pages. However, it was later revealed that the original report was close to 100 pages. Incidentally, the 11 pages that were made public in 1995, had only one name – that of Iqbal Mirchi.

The Vohra Committee Report describes Mirchi as, "Iqbal Mirchi of Bombay who, till the late 80s, was merely a visitor to passenger and carrier ships to obtain liquor and cigarettes for selling the same at a profit. In the last 3-4 years, Mirchi acquired real estate valuing crores of rupees; he has many bank accounts and has been paying lakhs of rupees to his carriers."

"The growth of Mirchi is due to the fact that the concerned enforcement agencies did not timely take action against him and, later, this perhaps became difficult on account of the enormous patronage that he had developed. If Mirchi is investigated, the entire patronage enjoyed by him and his linkages will come to light."

A political controversy too had ignited then when opposition party leaders had questioned the government on why it was hiding the details of the Vohra report. Dinesh Trivedi, who was the then Rajya Sabha MP in 1995, had asked the Minister for Home Affairs saying that it was not releasing the entire report as then the individuals who helped the criminals would become identifiable.

Trivedi had even moved the Supreme Court, seeking the release of the documents, but was not successful.

Govt agencies, politicians, filmstars and ISI – interlinked to stoke communal tensions

The 1993 NN Vohra report had stated that certain mafia elements have shifted to narcotics, drugs and weapon smuggling, thereby establishing the narco-terrorism network in India. We had recently reported how the Bollywood's drug web had international links wherein the money was eventually used for narco-terrorism.

The NN Vohra Committee report stated that the cost of contesting elections made politicians depend on the underworld network. The 1993 bomb blasts in Mumbai and subsequent communal violence in Surat and Ahmedabad showed that the underworld exploited Pakistan's ISI network in India to stoke communal tension in India. "The investigations into the Bombay bomb blast cases have revealed extensive linkages of the underworld in the various governmental agencies, political circles, business sector and the film world," the report stated.

Dawood, Memon brothers and Bomb blasts

In his report, NN Vohra mentions through the reports which investigated linkages of Dawood Ibrahim and gang, it was apparent that "the activities of Memon Brothers and Dawood Ibrahim had progressed over the years, leading to the establishment of a powerful network. This could not have happened without these elements having been protected by the functionaries of the concerned Government departments, specially Customs, Income Tax, Police and others."

Vohra report contains names of key political leaders, says intelligence officers

According to Intelligence Bureau (IB) officials, the report contains the names of leading politicians and bureaucrats who were the key players who helped Dawood and Mirchi from the 1970s till 1993.

Additionally, there is a strong hope among former Intelligence officials that the Modi government will make 100 pages of the report public, especially with Amit Shah now raking up the issue of the connections between

politicians and Dawood. Recently, Union Home Minister Amit Shah had said that former Union Aviation Minister and NCP leader Praful Patel took part in "treason" by allegedly engaging in a financial transaction with Iqbal Mirchi's wife, Hajra Memon.

Speaking to Sunday Guardian, IB officials said that the Ministry of Home Affairs (MHA) was given a lot of information that was collected by the IB which was then submitted to the Vohra committee. This information, according to IB officials, moslly pertained to politicians from Gujarat and Maharashtra who are very much active in politics even now and their links with underworld mafia.

One official said, "Dawood at the time was not the pariah he is now. People would like to be associated with him despite knowing that he was perhaps the biggest criminal element in the entire country. The MHA was given all kinds of information, in volumes of pages, which were 'ultra-sensitive' in nature."

"This information clearly showed how politicians were on the payroll of Dawood and how they were acting as his servants. Much of this information was produced in the Vohra committee report, in the portion which was not made public. We can understand why it was not made public before, but now, there is no political compulsion as such. It should have been presented before the public to show the deep nexus that existed between the politicians and Dawood," a former IB official said.

Report mentions nexus between former Maharashtra CM and Dawood Ibrahim, say officials

The intelligence inputs given by the agencies at the time, had stated that there was a "definite" nexus between Dawood and a very big leader of Maharashtra since the late 1970s.

As per the Sunday Guardian report, this very prominent leader of the state had received almost Rs 70 crore from Dawood till the 1993 blasts. The reports also mentioned how Rs 5 crore was given to another politician through hawala to help him in contesting the 1990 elections.

Interestingly, the Vohra report also had the name of a "former CM". Another input that is a part of the annexures of the Vohra Committee report revealed how two tranches of Rs 5 crore each was given by Dawood in 1992 to a relative of a Chief Minister who later himself became a politician.

The annexures also mentions the name of a very powerful leader from the Congress, who at that time was a mid-level operative, but is now among the top ten.

A former top IB officer said, "Gujarat-based leaders were prominently mentioned in the annexures. If the Home Minister decides to summon these annexures, if he has not seen them till now, he will find very familiar names in them. Every leader comes and makes statements on Dawood and Mirchi. The real test of intent is

whether they have the guts to take action on the basis of what they already have—the findings of the Vohra committee that are encompassed in the annexures."

Q26. Analyze Justice Lentin Commission of Enquiry on JJ Hospital tragedy.

The Justice Lentin Commission of Enquiry: A Case Study

In January–February 1986, 14 patients well on the road to recovery in Mumbai's government- run JJ Hospital suddenly died, showing identical symptoms after consuming a routine medicine glycerine (or glycerol), an anti-oedema drug used to combat swelling. The glycerine was laced with industrial glycol, a chemical which attacks the kidneys and kills quickly. These deaths may not have come to public notice but for the Maharashtra Times story on it, broken by journalist Jagan Phadnis. The public furore that followed compelled the Maharashtra government to announce the institution of an enquiry commission, led by a sitting judge of the Bombay High Court, Justice B. Lentin, and presumed that the matter would blow over. It did not, and for several years thereafter, the Justice Lentin Commission of Inquiry remained the focus of intense and unprecedented public and media interest.

In the introduction to the report of the commission, Justice Lentin wrote, 'Little did the 14 persons who died in the JJ Hospital tragedy know that they would arouse an outcry of public indignation which would lay bare lack of probity in public life, malaise and corruption in high places indulged in contempt of the laws of God and man. All is over bar the shouting. It is time to pause and forage into the murky waters of lies, deceit, intrigue, ineptitude and corruption to salvage the truth which led to this ghastly and tragic episode.'

This report, made public in March 1988, after much prevarication by the state government, is the first official document of its kind providing a rare and detailed insight into the state of our public health system. Its pages describe the 'ugly facets of the human mind and human nature, projecting errors of judgement, misuse of ministerial power and authority, apathy towards human life, corruption, nexus and quid pro quo between unscrupulous licence holders, analytical laboratories, elements in the Industries Department controlling the awards of rate contracts; manufacturers, traders, merchants, suppliers, Food and Drugs Administration (FDA) and persons holding ministerial rank. None of this will be palatable in the affected quarters. But that cannot be helped'.

The commission's sittings, which ran on for one-and-a-half years, initially focused on the JJ Hospital staff. Inertia, lack of accountability, and total absence of communication were the hallmark of their functioning. It exposed the gross negligence of the top administration in withdrawing the killer drug, which continued to do

the rounds in the wards for four days, even after some alert hospital doctors had sounded the 'red alert' on January 25, 1986 and identified the suspect drugs. The hearings revealed the archaic method of communication within the sprawling hospital, where even on a matter as vital as stopping a killer drug, the information was conveyed through a single, roving, handwritten circular. With record keeping in shambles the system of drug recall needed remodelling on an emergency footing, the com- mission noted.

Dwelling at length on the qualities and duties of top hospital administrators who had utterly failed in acting to stop the killer drug even after being informed about it in writing, Justice Lentin observed, 'The success of any system must ultimately depend on the integrity and efficiency of those manning it, and if these attributes are found at the top, they must percolate downwards. It is here where the system has utterly failed, resulting in the kind of tragedy which struck the JJ Hospital.'

The commission provided an important understanding of the drug purchase system followed in our public hospitals. Kept deliberately obtuse and secretive, its rules left to individual caprice, it facilitated racketeering and money making right down the line, at huge public cost. The JJ Hospital tragedy took place because the FDA (Food and Drug Administration) granted an illegal licence to Alpana Pharma, supplier of the killer drug glycerol, without ensuring that basic regulations were complied with. During the course of the hearings and even thereafter, one found that the name of Ramanlal Karwa and his brothers, the owners of Alpana Pharma worked like a 'magic wand'—as Justice Lentin put it—in the corridors of power. (Even after the JJ Hospital tragedy and despite the commission's strong indictment, the Karwa brothers continued to find favour as drug suppliers to public hospitals, using the simple expedient of starting a company with a new name.)

Meanwhile, the members of the hospital's drug purchase committee, which included hospital doctors and government departments, went out of their way to place the hospital's drug supply order with Alpana Pharma, far exceeding the proportion allotted to them by the industries department in their rate contract. The quid pro quo was evident with the discovery of money placed by the drug supplier in the private bank account of committee members, as in the case of the hospital's then head of pharmacology department.

The absence of checks to ensure that quality drugs reached the public was revealed with painful clarity during the commission's investigations. At that time there were only four government-owned drug-testing laboratories in the country and in order to cope with the huge workload the government appointed 'government approved' private laboratories that certified the purity of drugs. One such was Chem Med Laboratory that certified Alpana Pharma's killer glycerol as being of standard quality. This company enjoyed special protection of FDA officials who had been wined and dined by the owners. Even after its role in the JJ

Hospital tragedy was known to them, the FDA indulged in a massive cover up to shield this company by raising 'red herrings' and leading investigators up the wrong path.

In the case of yet another firm, Apex Laboratory, 14 assistant chemist employees had complained to the FDA about the firm writing 'false, incomplete, misleading and imaginary reports' related to drug analysis tests, but the organization did not take action.

An issue intensely debated at that time, as an outcome of the commission's hearings, was whether public hospitals as also drug manufacturers should set up in-house drug- testing laboratories to ensure drug purity. Although a mandatory precondition for issuing of a drug manufacturing license, the FDA did not insist on its implementation. Small drug manufacturers insisted that they could not afford it. The trouble, however, was that even large drug companies— including multinationals that had in-house drug-testing laboratories— produced substandard drugs and could not be trusted to voluntarily withdraw them from the market unless caught by the FDA and severely penalized, which the latter was not inclined to do.

The fact that even 'reputed' drug companies were repeat offenders was discovered by Justice Lentin when he visited the FDA headquarters during the commission's investigations and examined the FDA's Register of Sub-Standard Drugs, which he dubbed 'The Murder Book'. It revealed the FDA's failure in prosecuting 582 grossly erring drug manufacturing concerns, whose drugs were found to be substandard, misbranded, or sub-therapeutic, the majority of which were termed as 'life saving drugs'. Many of these 'merchants of death' were habitual offenders, having committed as many as 41 offences during the span of five months in 1986, but the FDA turned a blind eye. When questioned, FDA joint commissioner S. Dolas told the commission that 'someone has to die first', before the FDA could issue prohibitory orders against a firm.

This pointed to the enormous scale on which the public health system had been reduced to a captive market for profit spinning, where human life was of least concern. An examination of this register or 'murder book', if monitored today, would clearly provide the clues we need to explain why — despite the JJ Hospital tragedy — no lessons have been learnt and killer drugs continue to stalk patients in both public and private hospitals.

This and a multitude of such incidents uncovered by the commission revealed how the system of drug purchase and licensing was vulnerable to the pressures of vested interests. In consequence, the commission underlined that the cheapest-priced drug was not a criterion to guarantee quality drugs. It recommended scrapping of drug procurement through the rate contract system and reservation for backward areas. It instead suggested that government hospitals directly purchase their quota from reputed manufacturers and conduct their own tests to ensure standard-quality drugs, amongst other measures.

Looking beyond the specific JJ Hospital episode, the commission then expanded its scope to a thorough probe into the state of the public health system in Maharashtra. Over 10 politicians, which included health ministers past and present, MPs, and MLAs, were forced to reveal—after much prevarication and loss of memory and when confronted with documentary evidence— how their interference in the workings of the FDA had harmed public interest by the protection they gave to manufacturers of substandard drugs and destroyed the moral fibre of the FDA, reducing it to a 'lapdog body', according to the judge.

The Lentin report strongly indicted then health minister Bhai Sawant who was charged with gross ministerial interference, favouritism for extraneous considerations, and misuse of power, while irresistible inference of corruption was also drawn against him. It recommended an Anti-Corruption Bureau investigation against him as also former health minister Baliram Hiray, who was similarly indicted.

The commission found that the 'government machinery was utilised by these politicians to extort money from the drugs industry to inflate the coffers of private trusts with which the ministers were associated.' Dr Hiray was hard-pressed to explain to the commission how the Bhau Saheb Hiray Smarnika Samiti Trust had received a large number of donations from beer bars, distilleries, and liquor vendors from all over Maharashtra as well as several hundred pharma concerns, including multinationals, which fell within his jurisdiction as minister. He had also assisted the trust in acquiring government-allotted land in Bandra, measuring 1,927 square metres at a throwaway price of Rs3.49 lakh.

The findings of the Lentin Commission are important not just for Maharashtra's public health system but also for other states, as the majority of the drugs produced in India are manufactured in Maharashtra and patients from across the country come here for tertiary treatment. The commission found that far from regulating and imposing standards on the drug industry, the FDA had wilfully allowed substandard drugs to be sold in the market. The commission undertook a detailed investigation into the manner in which the FDA functioned, both in terms of licensing and controlling the standard of drugs produced. The licensing of the then Rs. 2,000 crore drugs industry in Maharashtra was solely handled by the FDA joint commissioner and licensing authority, who was answerable to none but the health minister. This official handled all applications for licences and had the power to refuse or grant them. He was also responsible for launching prosecutions against offenders amongst drug manufacturers. These untrammelled powers that he enjoyed could only be challenged in an appeal to the health minister.

'In the hands of unscrupulous Joint Commissioners and Licensing Authority, it could be an instrument of harassment and a device to make vast sums of money. This added to the inducements of the manufacturer of

substandard, spurious and misbranded drugs and total lack of fear of the consequences provided by the Act and Rules.' the judge stated.

Dividends came to those FDA officials who said 'Yes Minister' promptly enough. Their talent lay in wresting donations from the profit-spinning pharma companies which swelled the coffers of the private trusts controlled by ministers. It was this talent that enabled officers like S.M. Dolas, the FDA joint commissioner and sole licensing authority in the state to thwart every transfer order, supported as he was by a galaxy of politicians, thereby enabling an uninterrupted 20-year posting in Mumbai. Politicians stepped in to cancel every transfer made on Dolas since 1978 and overruled adverse reports made against him by successive FDA commissioners.

India's hard-earned reputation as one of the top-ranking global producers of medicines continues to take a beating for its inability to tackle this nexus of corruption as highlighted by the Lentin Commission. While the government has moved to decentralize the powers of the licensing authority, the FDA is still unable to perform its role as a watchdog. A policy brief published by The Foundation for Research in Community Health on 'Accessing Medicines in Africa and South Asia (July 2013) states: 'Its (Indian government) failure to establish a strong drug regulatory mechanism is casting doubt on the safety and quality of Indian drugs. With complaints of sub-standard drugs coming from major international buyers the US, Uganda, South Africa, there is deep concern within the Indian pharmaceutical industry that the 'black sheep can tar the credibility of the entire industry'. The country's pharmaceutical industry today valued at Rs.1,00,000 crore is seeing a rapid growth at approximately 10 per cent per year. It meets 95 per cent of the domestic needs and has a 10 per cent share by volume in the global market.

The Lentin Commission of Inquiry had highlighted how the safety and quality of drugs produced in Maharashtra, where 29 per cent of the country's manufacturing and sales units are based, must urgently undergo scrutiny and reform. The state commands a 38 per cent share (2008–9) of India's Rs 42,000 crore export market in medicines.

Some key thinking emerging from the debates of that time is that the government will not be able to stem such tragedies unless it addresses itself to two tasks. To begin with in the short term, given Indian conditions—where we contend with an irresponsible pharmaceutical industry and an inadequate vigilance machinery—there is need for stiff penal action against errant manufacturers (which includes FDA confiscation of machinery and property in extreme cases) and prevention of cases from languishing in the courts. Evidence shows that even these measures come to nought in the absence of strong political commitment to weed out corruption and disallow the shielding of politician cronies.

In the long term, many see that the only solution lies in curb- ing the number of drugs, reducing them to the 270 basic drugs recommended by the WHO (World Health Organization). This was also endorsed by the Hathi Committee and former FDA commissioners who agree saying there is a definite advantage in this. Several consumer and medical bodies have asserted the need to start by weeding out drugs banned the world over, but continue to be manufactured and sold in India, in some cases even in defiance of the ban order of the Drug Controller of India, under the shield of court-granted stay orders. Also highlighted is the need to use drugs by their generic rather than brand names, which would curb their proliferation and bring down prices. They have also stressed the uselessness of cough mixtures, tonics—major money spinners for the industry—which can be effectively and cheaply substituted by a balanced food diet. Such measures would enable the medical and pharmaceutical industries to get back to their role of creating health rather than merely selling drugs.

As a cub reporter then working The Indian Express in Mumbai, I chose to cover the daily hearings of the Lentin Commission through its entire duration of one-and-a-half years. It turned out to be a rare exposure and education on how the public health system works in our country and where one needs to look to find irregularities. This exposure enabled me to subsequently conduct my own investigations into the public health system, leading to the uncovering of some more contaminated drug-related tragedies at two leading private hospitals in Mumbai—the Tata Memorial Hospital ('The cure that killed', 8 May 1988, The Indian Express) and Bombay Hospital ('Sub-standard drug kills six in Bombay Hospital' 2 and 16 June 1991, The Sunday Observer). One also found that those indicted by the Lentin Commission continued to flourish and wield favour in the corridors of power while political parties closed ranks to protect their spheres of vested interest. Despite the work of the Lentin Commission and several other reports of official expert committees, nothing has changed. The nexus of corruption and negligence in our healthcare system is intact but is rarely exposed in the absence of a vigilant media, strong public pressure, and government commitment.

Q27. Examine the Opinions of Disciplinary Committee of the Bar Council of India.

Bar Council of India –Rules on Professional Standards

Advocates, in addition to being professionals, are also officers of the courts and play a vital role in the administration of justice. Accordingly, the set of rules that govern their professional conduct arise out of the duty that they owe the court, the client, their opponents and other advocates.

Rules on the professional standards that an advocate needs to maintain are mentioned in Chapter II, Part VI of the Bar Council of India Rules. These rules have been placed there under section 49(1)(c) of the Advocates Act, 1961.

RULES ON AN ADVOCATE'S DUTY TOWARDS THE COURT

1. Act in a dignified manner

During the presentation of his case and also while acting before a court, an advocate should act in a dignified manner. He should at all times conduct himself with self-respect. However, whenever there is proper ground for serious complaint against a judicial officer, the advocate has a right and duty to submit his grievance to proper authorities.

2. Respect the court

An advocate should always show respect towards the court. An advocate has to bear in mind that the dignity and respect maintained towards judicial office is essential for the survival of a free community.

3. Not communicate in private

An advocate should not communicate in private to a judge with regard to any matter pending before the judge or any other judge. An advocate should not influence the decision of a court in any matter using illegal or improper means such as coercion, bribe etc.

4. Refuse to act in an illegal manner towards the opposition

An advocate should refuse to act in an illegal or improper manner towards the opposing counsel or the opposing parties. He shall also use his best efforts to restrain and prevent his client from acting in any illegal, improper manner or use unfair practices in any mater towards the judiciary, opposing counsel or the opposing parties.

5. Refuse to represent clients who insist on unfair means

An advocate shall refuse to represent any client who insists on using unfair or improper means. An advocate shall excise his own judgment in such matters. He shall not blindly follow the instructions of the client. He shall be dignified in use of his language in correspondence and during arguments in court. He shall not scandalously damage the reputation of the parties on false grounds during pleadings. He shall not use unparliamentary language during arguments in the court.

6. Appear in proper dress code

An advocate should appear in court at all times only in the dress prescribed under the Bar Council of India Rules and his appearance should always be presentable.

7. Refuse to appear in front of relations

An advocate should not enter appearance, act, plead or practice in any way before a judicial authority if the sole or any member of the bench is related to the advocate as father, grandfather, son, grandson, uncle, brother, nephew, first cousin, husband, wife, mother, daughter, sister, aunt, niece, father-in-law, mother-in-law, son-in-law, brother-in-law daughter-in-law or sister-in-law.

8. Not to wear bands or gowns in public places

An advocate should not wear bands or gowns in public places other than in courts, except on such ceremonial occasions and at such places as the Bar Council of India or as the court may prescribe.

9. Not represent establishments of which he is a member

An advocate should not appear in or before any judicial authority, for or against any establishment if he is a member of the management of the establishment. This rule does not apply to a member appearing as "amicus curiae" or without a fee on behalf of the Bar Council, Incorporated Law Society or a Bar Association.

10. Not appear in matters of pecuniary interest -An advocate should not act or plead in any matter in which he has financial interests. For instance, he should not act in a bankruptcy petition when he is also a creditor of the bankrupt. He should also not accept a brief from a company of which he is a Director.

11. Not stand as surety for client

An advocate should not stand as a surety, or certify the soundness of a surety that his client requires for the purpose of any legal proceedings.

RULES ON AN ADVOCATE'S DUTY TOWARDS THE CLIENT

1. Bound to accept briefs

An advocate is bound to accept any brief in the courts or tribunals or before any other authority in or before which he proposes to practise. He should levy fees which is at par with the fees collected by fellow advocates of his standing at the Bar and the nature of the case. Special circumstances may justify his refusal to accept a particular brief.

2. Not withdraw from service

An advocate should not ordinarily withdraw from serving a client once he has agreed to serve them. He can withdraw only if he has a sufficient cause and by giving reasonable and sufficient notice to the client. Upon withdrawal, he shall refund such part of the fee that has not accrued to the client.

3. Not appear in matters where he himself is a witness

An advocate should not accept a brief or appear in a case in which he himself is a witness. If he has a reason to believe that in due course of events he will be a witness, then he should not continue to appear for the client. He should retire from the case without jeopardising his client's interests.

4. Full and frank disclosure to client

An advocate should, at the commencement of his engagement and during the continuance thereof, make all such full and frank disclosure to his client relating to his connection with the parties and any interest in or about the controversy as are likely to affect his client's judgement in either engaging him or continuing the engagement.

5. Uphold interest of the client

It shall be the duty of an advocate fearlessly to uphold the interests of his client by all fair and honourable means. An advocate shall do so without regard to any unpleasant consequences to himself or any other. He shall defend a person accused of a crime regardless of his personal opinion as to the guilt of the accused. An advocate should always remember that his loyalty is to the law, which requires that no man should be punished without adequate evidence.

6. Not suppress material or evidence

An advocate appearing for the prosecution of a criminal trial should conduct the proceedings in a manner that it does not lead to conviction of the innocent. An advocate shall by no means suppress any material or evidence, which shall prove the innocence of the accused.

7. Not disclose the communications between client and himself

An advocate should not by any means, directly or indirectly, disclose the communications made by his client to him. He also shall not disclose the advice given by him in the proceedings. However, he is liable to disclose if it violates Section 126 of the Indian Evidence Act, 1872.

8. An advocate should not be a party to stir up or instigate litigation.

9. An advocate should not act on the instructions of any person other than his client or the client's authorised agent.

10. Not charge depending on success of matters -An advocate should not charge for his services depending on the success of the matter undertaken. He also shall not charge for his services as a percentage of the amount or property received after the success of the matter.

11. Not receive interest in actionable claim

An advocate should not trade or agree to receive any share or interest in any actionable claim. Nothing in this rule shall apply to stock, shares and debentures of government securities, or to any instruments, which are, for the time being, by law or custom, negotiable or to any mercantile document of title to goods.

12. Not bid or purchase property arising of legal proceeding

An advocate should not by any means bid for, or purchase, either in his own name or in any other name, for his own benefit or for the benefit of any other person, any property sold in any legal proceeding in which he was in any way professionally engaged. However, it does not prevent an advocate from bidding for or purchasing for his client any property on behalf of the client provided the Advocate is expressly authorised in writing in this behalf.

13. Not bid or transfer property arising of legal proceeding

An advocate should not by any means bid in court auction or acquire by way of sale, gift, exchange or any other mode of transfer (either in his own name or in any other name for his own benefit or for the benefit of any other person), any property which is the subject matter of any suit, appeal or other proceedings in which he is in any way professionally engaged.

14. Not adjust fees against personal liability

An advocate should not adjust fee payable to him by his client against his own personal liability to the client, which does not arise in the course of his employment as an advocate.

15. An advocate should not misuse or takes advantage of the confidence reposed in him by his client.

16. Keep proper accounts

An advocate should always keep accounts of the clients' money entrusted to him. The accounts should show the amounts received from the client or on his behalf. The account should show along with the expenses incurred for him and the deductions made on account of fees with respective dates and all other necessary particulars.

17. Divert money from accounts

An advocate should mention in his accounts whether any monies received by him from the client are on account of fees or expenses during the course of any proceeding or opinion. He shall not divert any part of the amounts received for expenses as fees without written instruction from the client.

18. Intimate the client on amounts

Where any amount is received or given to him on behalf of his client, the advocate must without any delay intimate the client of the fact of such receipt.

19. Adjust fees after termination of proceedings

An advocate shall after the termination of proceedings, be at liberty to adjust the fees due to him from the account of the client. The balance in the account can be the amount paid by the client or an amount that has come in that proceeding. Any amount left after the deduction of the fees and expenses from the account must be returned to the client.

20. Provide copy of accounts

An advocate must provide the client with the copy of the client's account maintained by him on demand, provided that the necessary copying charge is paid.

21. An advocate shall not enter into arrangements whereby funds in his hands are converted into loans.

22. Not lend money to his client

An advocate shall not lend money to his client for the purpose of any action or legal proceedings in which he is engaged by such client. An advocate cannot be held guilty for a breach of this rule, if in the course of a pending suit or proceeding, and without any arrangement with the client in respect of the same, the advocate feels compelled by reason of the rule of the Court to make a payment to the Court on account of the client for the progress of the suit or proceeding.

23. Not appear for opposite parties

An advocate who has advised a party in connection with the institution of a suit, appeal or other matter or has drawn pleadings, or acted for a party, shall not act, appear or plead for the opposite party in the same matter.

RULES ON ADVOCATE'S DUTY TO OPPONENTS

1. Not to negotiate directly with opposing party

An advocate shall not in any way communicate or negotiate or call for settlement upon the subject matter of controversy with any party represented by an advocate except through the advocate representing the parties.

2. Carry out legitimate promises made

An advocate shall do his best to carry out all legitimate promises made to the opposite party even though not reduced to writing or enforceable under the rules of the Court.

RULES ON AN ADVOCATE'S DUTY TOWARDS FELLOW ADVOCATES

1. Not advertise or solicit work

An advocate shall not solicit work or advertise in any manner. He shall not promote himself by circulars, advertisements, touts, personal communications, interviews other than through personal relations, furnishing or inspiring newspaper comments or producing his photographs to be published in connection with cases in which he has been engaged or concerned.

2. Sign-board and Name-plate

An advocate's sign-board or name-plate should be of a reasonable size. The sign-board or name-plate or stationery should not indicate that he is or has been President or Member of a Bar Council or of any Association or that he has been associated with any person or organisation or with any particular cause or matter or that he specialises in any particular type of work or that he has been a Judge or an Advocate General.

3. Not promote unauthorized practice of law

An advocate shall not permit his professional services or his name to be used for promoting or starting any unauthorised practice of law.

4. An advocate shall not accept a fee less than the fee, which can be taxed under rules when the client is able to pay more.

5. Consent of fellow advocate to appear

An advocate should not appear in any matter where another advocate has filed a vakalat or memo for the same party. However, the advocate can take the consent of the other advocate for appearing.

In case, an advocate is not able to present the consent of the advocate who has filed the matter for the same party, then he should apply to the court for appearance. He shall in such application mention the reason as to why he could not obtain such consent. He shall appear only after obtaining the permission of the Court.

Q28. Critically analyze the laws relating to sexual harassment at workplace in India.

A critical analysis of the laws available in India against sexual harassment at workplace.

The Law Against Sexual Harassment

Introduction

Women were sexually harassed long before there was a term for it. Since industrialization, women working in factories and offices have had to endure sexual comments and demands by bosses and coworkers as the price for economic survival. In the absence of civil and penal laws in India, for providing adequately and specific protection to women from sexual harassment in the work places, in 1997, the Supreme Court passed a landmark judgment in Vishaka vs. State of Rajasthan, laying down guidelines to be followed by establishments in dealing with complaints about sexual harassment. After almost two decades, the specific Act against sexual harassment has been formulated by the Indian Legislature. Although the Act was welcomed and expected to meet the needs of the present day, the problematic provisions and unanswered questions present a conundrum for application of the Act, and should to be clarified for effective implementation of the Act.

A safe workplace is a woman’s legal right. Sexual harassment constitutes a gross violation of women's right to equality and dignity. It has its roots in patriarchy and its attendant perception that men are superior to women and that some forms of violence against women are acceptable. One of these is workplace sexual harassment, which views various forms of such harassment, as harmless and trivial. Any act of sexual harassment to a

woman at workplace is not only the violation of her constitutional rights but also violation of her human rights. It creates an insecure and hostile work environment, which discourages women's participation in work, thereby adversely affecting their economic empowerment and the goal of inclusive growth.. It is offensive at a very personal level and in a way undermines the right to equal opportunity and equal treatment of women at the workplace.

The laws in India have strived to provide for the protection to women against sexual harassment. Criminal and civil remedies have been made available by such laws. The researcher has studied the different legislations that have been enacted throughout the years. The Vishakha guidelines have also been discussed in relation to such offences. These guidelines provided for protection when there did not exist any specific legislation against sexual harassment. The researcher has given a critical analysis of the laws in order to understand the requirements based on which the available laws need to be rectified.

Secondary sources of data have been used as the researcher has used books from the library and various articles from journals available in the library as well as online sources.

Sexual Harassment at Workplace

Sexual harassment is considered as a violation of a woman's fundamental right to equality, which right is guaranteed by Articles 14 and 15 of the Constitution. Workplace sexual harassment creates an insecure and hostile work environment, thereby discouraging women's participation in work and adversely affecting their social and economic growth. Sexual harassment is not only viewed as a discrimination problem related to safety and health, but also as a violation of fundamental rights and human rights. It is offensive at a very personal level and in a way undermines the right to equal opportunity and equal treatment of women at the workplace. Workplace bullying often goes on to take the form of sexual harassment. Power dynamics play a major role in the advancement of actions that amount to sexual harassment. The Supreme Court of India through its landmark judgment in Vishakha v. State of Rajasthan has deemed sexual harassment to be a violation of human rights standards as it threatens the dignity of the person facing such harassment. The results of a global survey asking women journalists to recount the abuse experienced at work, show that nearly 65% of the respondents said they had encountered "intimidation, threats, or abuse" in relation to their work, according to the online survey by the International News Safety Institute (INSI) and International Women's Media Foundation.

Meaning of Sexual Harassment

Sexual harassment includes unwelcome sexual advances, requests for sexual favors, and other verbal or physical harassment of a sexual nature in the workplace or learning environment, according to the Equal Employment Opportunity Commission. Harassment does not have to be of a sexual nature, however, and can include offensive remarks about a person's sex. For example, it is illegal to harass a woman by making offensive comments about women in general. The victim and perpetrator can be a male or a female. The law in India, however, recognizes and penalizes sexual harassment only against women. Sexual harassment does not always have to be specifically about sexual behavior or directed at a specific person. It can be a general comment that is 'unwelcome'. The Merriam Webster Dictionary defines sexual harassment as "uninvited and unwelcome verbal or physical behavior of a sexual nature especially by a person in authority toward a subordinate (such as an employee or student)" The term "unwelcome" implies that, such conduct has not been solicited or initiated by the employee and, she takes it as undesirable and offensive. Sexual harassment thus includes an extensive range of acts, gestures and expressions having sexual connotations. Perceptions differ about what behaviors constitute sexual harassment.

However, typical examples of sexual harassment include sexually oriented gestures, jokes, or remarks that are unwelcome; repeated and unwanted sexual advances; touching or other unwelcome bodily contact; and physical intimidation. Sexual harassment can occur when one person has power over another and uses it to coerce the person to accept unwanted sexual attention. It can also occur among peers-for example, if coworkers repeatedly tell sexual jokes, post pornographic photos, or make unwelcome sexual innuendos to another co-worker. Therefore, verbal harassment of a sexual nature and in pursuance of sexual favours can also come within the ambit of the term sexual harassment. Sexual harassment can occur in the workplace or learning environment, like a school or university. It can happen in many different scenarios, including after-hours conversations, exchanges in the hallways, and non-office settings of employees or peers. Sexual harassment should not be tolerated in any circumstances and should be reported at the first instance so that actions can be taken immediately against the perpetrator.

The act of sexual harassment can be of two forms:

Quid Pro Quo (literally 'this for that')

- **Implied or explicit promise of preferential/detrimental treatment in employment**
- **Implied or express threat about her present or future employment status**

Hostile Work Environment

- **Creating a hostile, intimidating or an offensive work environment**
- **Humiliating treatment likely to affect her health or safety**

International Conventions on laws against sexual harassment

At an international level, sexual harassment has been identified to be a human rights violation as it causes harm to the dignity of the person harassed and can lead to hamper the emotional as well as mental well-being of the person. As sexual harassment in most cases is seen to be advanced towards a woman it is also perceived to be an outcome of the perpetual discrimination faced by women. As such international conventions like the UN Charter and CEDAW discusses the elimination of all forms of discrimination faced by women in all fronts. Incidents of sexual harassment are increasing exponentially—especially in Asian countries, where over half the world population resides. In India, a woman is sexually harassed every 12 minutes. In China, a survey was conducted by Women's Watch China in 2009, which found that 20 per cent of the 1,837 female respondents interviewed had experienced sexual harassment at work. Workplace Bullying is a globally recognized problem reflected in the recent agendas of international organizations such as the International Labour Office (ILO) and the World Health Organization (WHO). The ILO also conducts widespread awareness of the issue of sexual harassment as it is discrimination on the ground of sex in employment and occupation. As a consequence, the Committee of Experts on the Application of Conventions and Recommendations conducted a special survey in 1996 on Convention No .111 and confirmed that sexual harassment is a form of sex discrimination against women in employment as it undermines equality, damages working relationships and impairs productivity.

Universal Declaration of Human Rights (UDHR)

In 1948, the Universal Declaration of Human Rights (UDHR) was adopted by the United Nations General Assembly. Although this document was not originally binding on member states, it has received such wide acceptance as an outline of foundational human rights principles that it has been recognized as a binding

expression of customary law and an authoritative interpretation of the UN Charter itself. Article 3 of the UDHR states, "Everyone has the right to life, liberty and security of person." This right was reaffirmed in by the International Covenant on Civil and Political Rights(1966), which protects the right to life (Article 6) and the right to liberty and security of person (Article 9).These rights, as well as others in the UDHR, ICCPR, and the International Covenant on Social, Economic, and Cultural Rights (ICESCR), such as the right to equal protection under the law and the right to the highest standard of physical and mental health, are implicated in violence against women cases. Therefore, States that are parties to these instruments have an implicit obligation to protect women from violence as part of their obligations.

Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)

It was adopted in 1979 when awareness of sexual harassment at workplace was only beginning to emerge. As such there is no specific prohibition of sexual harassment against women. It was rather seen to be a form of violence against women and its prevention was interpreted to be covered under the prevention of all forms of violence under the Convention. The State parties to the present Convention expressed the concern that despite international conventions concluded under the auspices of the United Nations and the specialized agencies and the resolutions, declarations and recommendations adopted by the United Nations and the specialized agencies promoting equality of rights of men and women, extensive discrimination against women continues to exist. The Convention has twin objectives: to prohibit discrimination and to ensure equality. The most important development is that for the first time, the Convention provides an extensive definition of the term "discrimination against women" as any distinction, exclusion or restriction made on the basis of sex.

The Recommendation notes that ―equality in employment can be seriously impaired when women are subjected to gender-specific violence, such as sexual harassment in the workplace.The Recommendation also states that all parties should take all legal and other measures that are necessary to provide effective protection of women against gender-based violence, sexual assault and sexual harassment in the workplace. Although has ratified the CEDAW in 1993, yet it took two decades for formulate a legislation for protection and redressal against sexual harassment of women at workplace.

The United Nations Fourth World Conference on Women

The United Nations Fourth World Conference on Women, held in Beijing in 1995, adopted a Platform for Action, includes provisions on sexual harassment in the workplace. It calls on governments, trade unions,

employers, community and youth organizations, and NGOs to eliminate sexual harassment. More specifically, governments are urged to enact and enforce laws and administrative measures on sexual and other forms of harassment in the workplace.

Indigenous and Tribal Peoples Convention

This Convention of 1989 is the only convention that specifically refers to the offence of sexual harassment at workplace. It provides that governments shall do everything possible to prevent any discrimination between workers belonging to the peoples to whom the Convention applies and other workers, including taking measures to ensure that they enjoy protection from sexual harassment.

In consonance with the various international standards set through these conventions different countries have implemented laws at the national level in different ways. In many countries, specific acts of harassment have been categorized as a form of some other kind of prohibited conduct, such as sexual assault or defamation, without explicitly referring to ―sexual harassment. It may also be addressed under more than one legal branch in the same jurisdiction. Such as in Singapore, it can be under tort law as well as criminal law. In India, there is a specific legislation against sexual harassment at workplace as well as provisions in its Penal Code. In a number of countries, sexual harassment has been explicitly referred and recognized by their courts and tribunals as a distinct form of some broader type of prohibited behavior. Most commonly, it has been recognized as a form of sexual discrimination and prohibited under equality or anti-discrimination laws. In many other countries, legislatures have enacted legislation, or amended existing provisions, to specifically prohibit workplace sexual harassment. In many countries sexual harassment against workplace is included under their labour law codes.

Guidelines formulated in Vishakha v. State of Rajasthan & Ors., AIR 1997 SC 3011

During the 1990s, Rajasthan state government employee Bhanwari Devi who tried to prevent child marriage as part of her duties as a worker of the Women Development Programme was raped by the landlords of the community. The trial court acquitted the offenders and this inspired several women's groups to file a writ petition in the Supreme Court of India.

The Supreme Court through this landmark judgment stated that every instance of sexual harassment is a violation of fundamental rights guaranteed under Articles 14, 15 and 21 of the Constitution of India. It also amounts to violation of the "Right to freedom" under Article 19.

In this case, the Supreme Court took note of the fact that the present civil and penal laws in India do not adequately provide for specific protection of women from sexual harassment in work places and that enactment of such legislation will take considerable time. As such it was thought to be necessary and expedient for employers in work places as well as other responsible persons or institutions to observe certain guidelines to ensure the prevention of sexual harassment of women. The guidelines specifically provide that the employer should ensure that victims or witnesses are not victimized or discriminated against while dealing with complaints of sexual harassment. The victims of sexual harassment should have the option to seek transfer of the perpetrator or their own transfer.

The guidelines laid down were in regards to the following:

1. Duty of employer - It shall be the duty of the employer or other responsible persons in work places or other institutions to prevent or deter the commission of acts of sexual harassment and to provide the procedures for the resolution, settlement or prosecution of acts, of sexual harassment by taking all steps required.

2. Preventive steps - All employers or persons in charge of work place whether in public or private sector should take appropriate steps to prevent sexual harassment. These steps should ensure that appropriate work conditions are provided in respect of work, leisure, health and hygiene to further ensure that there is no hostile environment towards women at work places and no employee woman should have reasonable grounds to believe that she is disadvantaged in connection with her employment. The Rules/Regulations of Government and Public Sector bodies relating to conduct and discipline should include rules/regulations prohibiting sexual harassment and provide for appropriate penalties in such rules against the offender. Express prohibition of sexual harassment as discussed in this case must be notified, published and circulated in appropriate ways.

3. Criminal Proceedings - Where such conduct amounts to a specific offence under the Indian Penal Code or under any other law, the employer shall initiate appropriate action in accordance with law by making a complaint with the appropriate authority.

As such the liability is put on the employer to ensure that appropriate steps are taken when such cases of sexual harassment are reported. Disciplinary actions are also to be initiated against any such perpetrator.

4. Complaint Mechanism - Whether or not such conduct constitutes an offence under law or a breach of the service rules, an appropriate complaint mechanism should be created in the employer's organization for redress of the complaint made by the victim. Such complaint mechanism should ensure time bound treatment of complaints. The complaint mechanism should be adequate to provide, where necessary, a Complaints Committee, a special counselor or other support service, including the maintenance of confidentiality. The Complaints Committee should be headed by a woman and not less than half of its member should be women. Moreover, to prevent the possibility of any undue pressure or influence from senior levels, such Complaints Committee should involve a third party, either a member of an NGO or other body who is familiar with the issue of sexual harassment.

5. Third Party Harassment - Where sexual harassment occurs as a result of an act or omission by any third party or outsider, the employer and person in charge will take all steps necessary and reasonable to assist the affected person in terms of support and preventive action.

The Central Government and State Governments were also requested to consider adopting suitable measures including legislation to ensure that the guidelines laid down by this order are also observed by the employers in Private Sector. Amidst various other developments, controversies and delays, the Indian legislature finally enacted the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 (Act No. 14 of 2013), with an objective to protect women against sexual harassment at workplace and to put in place a redressal mechanism to handle complaints.

Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013

In 2013, the Government of India notified the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act. Consistent with the Vishaka judgment, the Act aspires to ensure women's right to workplace equality, free from sexual harassment through compliance with the elements of Prohibition, Prevention and Redressal.

Scope and Ambit of the Act

The Prevention of Workplace Sexual Harassment Act extends to the 'whole of India' and stipulates that a woman shall not be subjected to sexual harassment at her workplace. Further, the Prevention of Workplace Sexual Harassment Act applies to both the organized and unorganized sectors in India. The statute, inter alia, applies to government bodies, private and public sector organizations, non-governmental organizations, organizations carrying out commercial, vocational, educational, entertainment, industrial, financial activities, hospitals and nursing homes, educational institutes, sports institutions and stadiums used for training individuals and a dwelling place or a house.

Definitions

-Aggrieved Women: Aggrieved woman in this Act means a woman of any age who is employed or not at the workplace who alleges to have been subjected to any act of sexual harassment. It also includes woman employed in a dwelling place or house.It covers domestic workers which includes a woman who is employed to do the household work in any household for remuneration whether in cash or in kind. She may be appointed directly or through any agency. She may be on permanent, part time or full time basis. It does not include any member of the family of the employer.

-Appropriate Government: It means in relation to a workplace which is established, owned, controlled or wholly or substantially financed by funds provided directly or indirectly by the Central Government or the Union territory administration, the Central Government and by the State Government, the State Government. In relation to any workplace not covered under sub-clause (i) and falling within its territory, the State Government.

-Workplace: The scope of workplace in this Act is inclusive in nature. It includes:

(i) Any department, organization, undertaking, establishment, enterprise, institution, office, branch or unit which is established, owned, controlled or wholly or substantially financed by funds provided by the appropriate government or the local authority or a government company or corporation or a co-operative society

(ii) It also includes private sector organization or a private venture, undertaking, enterprise, institution, establishment, society, trust, non-governmental organization, unit or service provider carrying on commercial,

professional, vocational, educational, entertainment, industrial, health services or financial activities including production, supply, sale, distribution or service.

(iii) Hospitals or nursing homes.

(iv) Any sports institute, stadium, sports complex or competition or games venue, whether residential or not used for training, sports or other activities relating thereto.

(v) Any place visited by the employee arising out of or during the course of employment including transportation provided by the employer for undertaking such journey.

(vi) In relation to unorganized sector, workplace means an enterprises owned by individuals or self-employed workers and engaged in the production or sale of goods or providing service of any kind whatsoever and where the enterprise employs workers, the number of workers is less than ten.

-Employer: In relation to any department, organization, undertaking, establishment, enterprise, institution, office, branch or unit of the appropriate Government or a local authority, it is the head of that department. In relation to a workplace not covered under sub-clause (i) of this section, it is whoever is responsible for the management, control and supervision of such workplace. In relation to workplace covered under sub-clauses (1) and (ii), the person discharging contractual obligations with respect to his or her employees is the employer. In relation to a dwelling place or house it is a person of a household who employs or benefits from the employment of domestic worker, irrespective of the number, time period or type of such worker employed, or the nature of the employment or activities performed by the domestic worker.

-Sexual Harassment- The term sexual harassment under the Act covers one or more unwelcome acts or behaviour whether directly or by implication. Such unwelcome acts or behavior are:

(i) physical contact and advances or

(ii) a demand or request for sexual favours or

(iii) making sexually coloured remarks or

(iv) showing pornography or

(v) any other unwelcome physical, verbal or non-verbal conduct of sexual nature.

The following circumstances, among other circumstances, if it occurs or is present in relation to or connected with any act or behaviour of sexual harassment at workplace may amount to sexual harassment-

i) Implied or explicit promise of preferential treatment in her employment or

ii) Implied or explicit threat of detrimental treatment in her employment or

iii) Implied or explicit threat about her present or future employment status or

iv) Interference with her work or creating an intimidating or offensive or hostile work environment for her or

v) Humiliating treatment likely to affect her health or safety.

To enable prevention of sexual harassment at the workplace, it is critical to recognize and differentiate between welcome and unwelcome sexual behaviour. In 2010, the High Court of Delhi endorsed the view that sexual harassment is a subjective experience and for that reason held: "We therefore prefer to analyze harassment from the complainant's perspective. A complete understanding of the [complainant's] view requires an analysis of the different perspectives of men and women. Conduct that many men consider unobjectionable may offend many women. Men tend to view some forms of sexual harassment as harmless social interactions to which only overly-sensitive women would object. The characteristically male view depicts sexual harassment as comparatively harmless amusement. Men, who are rarely victims of sexual assault, may view sexual conduct in a vacuum without a full appreciation of the social setting or the underlying threat of violence that a woman may perceive."

Section 3(1) of the Act specifically prohibits the sexual harassment of any woman at a workplace.

The complaint of sexual harassment at workplace may be made in writing to the internal committee if it is constituted or the local committee, in case it is not so constituted with in a period of three months from the

date of incident and in case of a series of incidents with in a period of three months from the date of last incident. The committee is also empowered to extend this time limit of three months if it is satisfied that the circumstances were such which prevented the woman from filing a complaint within the said period. If woman cannot file complaint in writing then the committee shall render all reasonable assistance to the woman for making the complaint in writing. The complainant shall submit to the complaints committee six copies of the complaint along with supporting documents and the names and addresses of the witnesses. If aggrieved woman is unable to make a complaint on account of her physical or mental incapacity or death or otherwise, her legal heir or such other person as may be prescribed may make a complaint under this section.

Complaints Committee

Complaints committee under the Act means Internal Committee or the Local Committee as the case may be. The Act provides for the constitution of internal complaints committee. Every employer of workplace is bound to constitute in writing the internal complaints committee. Where the offices or administrative units of the workplace are located at different places or divisional or sub-divisional level, the internal committee shall be constituted at all administrative units or offices. The Local Committee is set up where the Internal Complaints Committee has not been constituted due to having less than ten workers or if the complaint is against the employer himself.

The committee shall consist of the following:

i) A presiding officer and other members. The presiding officer and every member of the committee shall hold office for such period not exceeding three years from the date of their nomination.37 Presiding officer of the committee shall be a woman employed at a senior level at the workplace from amongst the employees. If senior level woman employee is not available, the presiding officer shall be nominated from other offices or administrative units of the workplace. Further, in case, other offices or administrative units of the workplace do not have a senior level woman employee, the presiding officer shall be nominated from any other workplace of the same employer or other department or organization.

ii) Minimum two members, male or female from amongst the employees preferably committed to the cause of women or who have had experience in social work or have legal knowledge.

iii) One member shall be from amongst non-governmental organizations or associations committed to the cause of women or a person familiar with the issues relating to sexual harassment. At least one-half of the total members so nominated shall be women.

Procedure followed by the Complaints Committee:

Before initiating the inquiry, Complaints Committee on the request of the aggrieved woman may try to settle the dispute with the respondent through conciliation. In case there is no settlement and the respondent is an employee, the complaint committee shall proceed to make inquiry into the complaint in accordance with the provisions of the service rules applicable to the respondent and where no such rules exists, in such manner as may be prescribed or in case of domestic worker, the complaint committee shall, if prima facie case exists, forward the complaint to the police within a period of seven days for registering the case under section 509 of the Indian Penal Code and any other relevant provisions of the said Code. Further, where the aggrieved woman informs the complaints committee that the respondent is not complying with any term or condition of the settlement arrived through conciliation, the complaints committee shall proceed to make an inquiry into the complaint or forward the complaint to the police. In case, both the parties are employees, the parties shall during the course of inquiry be given an opportunity of being heard and a copy of the findings shall be made available to both the parties enabling them to make representation against the findings before the committee. The complaints committee shall send one of the copies received from the aggrieved woman to the respondent within a period of seven working days. The respondent shall file his reply to the complaint along with his list of documents and names and addresses of witnesses within a period not exceeding ten working days from the date of receipt of the documents.

Powers of Complaints Committee:

The Internal Complaints Committee and the Local Committee have been vested with the same powers as are vested in a civil court under the Code of Civil Procedure, 1908, which are:

i) Summoning and enforcing the attendance of any person and examining him on oath;

ii) Requiring the discovery and production of documents;

iii) Any other matter which may be prescribed.

The Committee on the written request of the aggrieved woman has the power to recommend to the employer during the pendency of the inquiry the following and the employer shall implement the recommendations:

(i) To transfer the aggrieved woman or the respondent to any other workplace;

(ii) To grant leave to the aggrieved woman up to a period of three months and this leave shall be in addition to the leave she would be otherwise entitled;

(iii) To grant such other relief to the aggrieved woman as may be prescribed.

(iv) In case, the complaints committee arrives at a conclusion that the allegation against the respondent has not been proved, it can recommend to the employer that no action is required to be taken in the matter.

(v) In case, the complaints committee arrives at a conclusion that the allegation against the respondent has been proved, it can recommend to the employer the following:

(a) to take action for sexual harassment as a misconduct under the service rules or if no service rules have been made, in such manner as may be prescribed

(b) to deduct from the salary or wages of the respondent such sum as it may consider appropriate to be paid to the aggrieved woman or to her legal heirs. If employer is unable to make such deduction from the salary of the respondent due to his being absent from duty or cessation of employment, it may direct to the respondent to pay such sum to the aggrieved woman. If respondent fails to pay the sum, the complaints committee may forward the order for recovery of the sum as an arrear of land revenue to the concerned District Officer.

Compensation to the Complainant

The complaints committee is empowered to determine the sum to be paid to the aggrieved woman. The complaints committee at the time of determining the sum shall have regard to:

i) the mental trauma, pain, suffering and emotional distress caused to the aggrieved woman;

ii) the loss in the career opportunity due to the incident of sexual harassment;

iii) medical expenses incurred by the victim for physical or psychiatric treatment;

iv) the income and financial status of the respondent;

v) feasibility of such payment in lump sum or in installments.

The Complaints Committee may recommend to the employer on the written request of aggrieved woman to:

i) restrain the respondent from reporting on the work performance of the aggrieved woman or writing her confidential report and assign the same to another officer

ii) restrain the respondent in case of an educational institution from supervising any academic activity of the aggrieved woman.

Duties of the Employer

The Act also provides for the duties of the employer in case of sexual harassment. It provides that every employer shall:

i) Provide safe working environment at the workplace. It also includes the safety from the persons coming into contact at the workplace.

ii) Display at any conspicuous place in the workplace, the penal consequences of sexual harassment and the order constituting the Internal Committee.

iii) Organise workshops and awareness programs at regular intervals for sensitizing the employees with the provisions of the Act. Organise orientation programs for the members of the Internal Committee.

iv) Provide necessary facilities to the internal committee or the local committee for dealing with the complaint and conducting an inquiry.

v) Assist in securing the attendance of respondent and witnesses before the internal committee or the local committee.

vi) Make available information having regard to the complaint to the internal committee or the local committee.

vii) Provide assistance to the aggrieved woman if she chooses to file a complaint under IPC or any other law for the time being in force.

viii) Cause to initiate action against the perpetrator under IPC or any other law for the time being in force or if the aggrieved woman so desires, where the perpetrator is not an employee in the workplace at which the incident of sexual harassment took place.

ix) Treat sexual harassment as misconduct under the service rules and initiate action for such misconduct.

x) Monitor the timely submission of reports by the Internal Committee.

xi) The employer shall include in the annual report of his organization, the number of cases filed and disposed under this Act or where no such report is required to be prepared, intimate such number of cases, if any, to the District Officer.

Punishment for the Employer

If the employer fails to constitute an internal committee or contravenes or attempts to contravene or abets contravention of other provisions of this Act or any rules made thereunder shall be punishable with fine which may extend to fifty thousand rupees.68 If any employer who is convicted of an offence punishable under this Act subsequently commits and is convicted of the same offence, he shall be liable to:

i) Twice the punishment which might have been imposed on a first conviction subject to the maximum punishment provided for the same offence. And in case a higher punishment is provided under any other law for the time being in force, for the offence for which the accused is being prosecuted, the court shall take due cognizance of the same while awarding punishment;

ii) The government or the local authority can cancel his license or consider withdrawal or non-renewal or approval of his license which is required for carrying on his business or activity.

Complaints committee has the power to recommend to the employer to take action against the complainant, in case, complaints committee arrives at a conclusion that the complaint has been made maliciously and knowing it to be false or the complainant has produced any forged or misleading document. But mere inability to substantiate the complaint or provide adequate proof in support of the complaint need not attract action against the complainant. Moreover, the malicious intent on the part of the complainant shall be established by the complaints committee before recommending the action against the complainant.

Other laws in relation to sexual harassment at workplace

Apart from the specific Act on Sexual Harassment against Women at Workplace there are other legislative protections available against sexual harassment in India.

These are:

1. Industrial Employment (Standing Orders) Act, 1946

It is a central enactment which, inter alia, requires an employer to define and publish uniform conditions of employment in the form of standing orders. the standing orders should contain terms of employment including, hours of work, wage rates, shift working, attendance and late coming, provision for leaves and holidays and termination or suspension/dismissal of employees. It applies to every industrial establishment wherein one hundred or more workmen are employed, or were employed on any day of the preceding twelve months.This Act extends to the whole of India.The Standing Orders Act prescribes Model Standing Orders, serving as guidelines for employers and in the event that an employer has not framed and certified its own standing orders, the provisions of the Model Standing Orders shall be applicable. The Model Standing Orders not only define ‘sexual harassment’ in line with the definition under the Vishaka Judgment, but also envisages the requirement to set up a complaints committee for redressal of grievances pertaining to workplace sexual harassment. It is interesting to note that ‘sexual harassment’ is not limited to women under the Standing Orders Rules.

2. Indian Penal Code, 1860

Conduct that may be construed as sexual harassment, can also constitute an offence and can be penalized under the IPC. Prior to the Criminal Amendment Act, 2013 it was brought within the ambit of Section 354 which made any act outraging the modesty of a woman a crime. After the said amendment, Section 354A has been inserted to make sexual harassment a particular offence. The following sections address the offence of sexual harassment:

Section 294: Obscene acts in any public place, singing obscene songs to the annoyance of others. Punishment for violation of this Section is Imprisonment for a term of up to 3 months or fine, or both.

Section 354 (A): A man committing any physical contact, advances involving unwelcome and explicit sexual overtures; or demanding or requesting sexual favours; or showing pornography against the will of a woman; or making sexually coloured remarks, shall be guilty of the offence of sexual harassment. It entails a punishment of rigorous imprisonment for a term which may extend to three years.

Section 509: Uttering any word or making any gesture intended to insult the modesty of a woman and intrudes her privacy. The offender is punished with simple imprisonment for a term which may extend to three years, and also with fine.

3. The Indecent Representation of Women (Prohibition) Act, 1987

An Act to prohibit indecent representation of women through advertisements or in publications, writings, paintings, figures or in any other manner and for matters connected therewith or incidental thereto. If an individual harasses another with books, photographs, paintings, films, pamphlets, packages, etc. containing ‘indecent representation of women’ they are liable for a minimum sentence of two years. According to this Act, "indecent representation of women" means the depiction in any manner of the figure of a woman; her form or body or any part thereof in such way as to have the effect of being indecent, or derogatory to, or denigrating women, or is likely to deprave, corrupt or injure the public morality or morals.

A critical analysis of the legislative protections available

Prior to the year 1997, India neither had a legislation combating the menace of sexual harassment at workplace nor was there any sturdy judicial pronouncement dealing with the same. Equality to women was guaranteed under the Constitutional safeguards provided by Articles 14, 15, 19 and 21. There did not exist any legislation that specifically dealt with the problem of sexual harassment within or outside the workplace. India

is also a party to the Convention on Elimination of Discrimination Against Women. Unfortunately, despite ratifying CEDAW in 1993, India remained without an effective legislation battling the nuisance of sexual harassment at workplace for almost 20 years until 2013 and working women in the country continued to struggle with sexual advances at the place of their work in the absence of any stringent grievance redressal mechanism. The Indian Penal Code also did not criminalize specific acts of Sexual Harassment until the Amendment Act of 2013 when Section 354A dealing with sexual harassment specifically was inserted in the Penal Code. Although there are two sections in the IPC which deals with the outraging of modesty of women namely Section 354 and 509, the term modesty has not been defined anywhere. In the case Swapna Barman v. Subir Das the Supreme Court held that "Under Section 509 that the word 'modesty' does not lead only to the contemplation of sexual relationship of an indecent character. The section includes indecency, but does not exclude all other acts falling short of downright indecency." Moreover, the view of the Supreme Court is that the essence of a woman's modesty is her sex. As per the Justice Verma Committee Report, certain modifications should be done in Section 509 of the IPC. The Committee has suggested that use of words, acts or gestures that create an unwelcome threat of a sexual nature should be termed as sexual assault. Similarly in Section 294 the word obscene has been used but the word has not been defined. The meaning of the word keeps varying from place to place. It differs in accordance to the circumstances- cultural, social and economic. Moreover, the essential condition to be satisfied is that the obscene act or song must cause annoyance. Since annoyance is a mental faculty of a person, therefore it has to be derived from the facts and circumstances of the case.

The Sexual Harassment Against Women at Workplace Act, 2013 was passed in order to protect the rights of women at workplace in light of constitutional and human rights of women at national as well as international level. It is also construed as a response to the public outrage that was seen after the Nirbhaya case in 2012. It extends to the whole of India including the State of Jammu and Kashmir. It is the duty of the appropriate government to monitor the implementation of this Act and maintain data on the number of cases filed and disposed of in respect of all cases of sexual harassment at workplace. Although this Act was welcomed as a much needed step on the part of the legislature, there are certain parts which need to be further amended. Discrimination is evident in the scope and ambit of the act as it is not gender-neutral. The Act provides protection against acts of sexual harassment only for women and not men. Interestingly, various recent studies and surveys have shown that that very often, workplaces also involve women initiating and engaging in acts of sexual harassment. In a recent survey there were 527 people queried across seven cities in the country. It was found that in practicality, circumstances are not totally so as they were envisaged by the legislators. Although, this Act is a great step forward in protection for women, it provides no mechanism to deal with

situation where men are the victims of sexual harassment. According to the US Equal Employment Opportunity Commission, both victim and the harasser can be either a woman or a man, and the victim and harasser can be the same sex. But the Indian laws, except the Industrial Employment (Standing Orders) Act do not deal with such situations. In Hyderabad, 29% of the respondents said they have been sexually harassed by their female bosses while 48% accused their male bosses while in Delhi 43% reported to have been sexually harassed by their female colleagues.

Under this Act, an aggrieved woman means a woman of any age who is employed or not at the workplace who alleges to have been subjected to any act of sexual harassment. It also includes domestic workers which includes a woman who is employed to do the household work in any household for remuneration whether in cash or in kind. The aggrieved woman is only one who "alleges". But it is seen that most cases of sexual harassment go unreported. This is primarily because it would have been embarrassing to discuss such matters with their family members and moreover it would have only aggravated their problem by troubling their family members who in distress might have asked them to leave the job / education or there was some apprehension that they might have found faults with their behaviour to have "invited" the abuse. Therefore, the woman who faces such harassment does not even 'allege' of any such occurrence. Moreover, it has been provided under the Act that "where the aggrieved woman for any other reason is unable to make a complaint, a complaint may be filed by any person who has knowledge of the incident, with her written consent." But the Act covers women who work as domestic help. It is seen in most cases that the women are not literate. The Act does not also give any provisions for educating and sensitizing women from such backgrounds regarding the remedies available to them.

Another question that has been raised on numerous occasions is with regard to the definition of the word "employee". The ambit of this definition is very wide. It can roughly be interpreted to include almost any male worker. This is evident by use of words like, "any work", "regular", "ad hoc", "temporary", "with contract", "through agent", "without agent", "voluntary basis" etc. Therefore, this raises a greater possibility of untrue allegations for malafide reasons and gives a lot of scope for frivolous and unnecessary litigation. It has been pointed out, that in light of the increased number of complaints since the passing of this Act, the employers feel discouraged from hiring women all together. This could result a great step backward in providing equal opportunity to women. If the case is found to be malafide, the complainant would face the same consequences, but no one really believes the latter would ever actually be carried out. Moreover, should a situation arise where a victim is unwilling to complain and an employer is aware of the situation there is no obligation under this Act to report it against the victim's wishes. The employers should be enabled to take suo

motu action, in case they come to know about such incident. And the committee should take cognizance of the complaint made by a person without consent of the aggrieved woman. Under this Act aggrieved woman is required to file a complaint under section 9 to the complaints committee. But woman should be free to file a complaint either to the committee or before any authority at the workplace and authority should be bound to transfer the complaint to the complaints committee. Aggrieved woman can file a complaint to the committee within three months of the incident and committee is empowered to extend this period up to three months in case reasonable cause of delay. She must be free to file a complaint at any time after commission of the incidence in case of reasonable cause of delay.

Under the definition of "sexual harassment" the Act defines acts that include physical contact, verbal request and showing of pornography. The provision narrows the scope of what may be construed as sexual harassment for application of this Act. Acknowledgement of technological advancements could have also been noted, so as to include all possible electronic means of sexual harassment. The definition of "sexual harassment" has also neglected to grant protection against potential victimization of the complainant by an employer. In regards to the constitution of the Internal Complaints Committee it should be noted that in-house management of complaints may act as a deterrent to victims. It is therefore suggested that the complainant need not forcibly file a complaint with the Internal Complaints Committee. A more adequate forum would be an independent employment tribunal to handle complaints in a more efficient manner, which would simultaneously be preferable to a victim.Apprehension has been expressed with respect to the disposition of the committee as a whole. The reason for it is the feminist biasness of the committee itself as it comprises of stakeholders strongly prejudiced in favour of the female sex. The most conspicuous shortcoming, however, is that the internal committee is composed of persons without any legal qualifications. This absence of training specifications for the internal complaints committee will result in an ill-equipped team and obstruct justice.

Section 10(1) provides for the settlement of the dispute through conciliation at the request of the aggrieved woman. Sexual harassment at workplace is the violation of right to work in safe environment of women. It becomes illogical and inconceivable to ask a sexually harassed woman to reconcile with her offender. Although, it is at the request of the aggrieved women to initiate such proceedings, provisions should be made as to why the woman would want to arrive at a settlement. The provision under Section 10(4) is that no further enquiries shall be made against the offender. However, stringent disciplinary steps should be taken against the perpetrator.

Complaints committee is empowered to grant leave to the aggrieved woman during the pendency of the inquiry for up to three months. These leaves should be paid leaves and it should not be granted only on the recommendation of the ICC. The employer should be obligated to grant such leaves to the aggrieved women. If the alleged sexual harassment is proved, the committee is empowered to take action against sexual harassment in accordance with the prescribed service rules, or to deduct adequate compensation from the salary of the employee, or to recover the compensation from the accused employee. Instead drastic action, such as dismissing the accused from employment or suspending him for a considerable time period without any pay should be taken. Section 26 prescribes penalties for non-compliance with the provisions of the Act, which includes a monetary fine upto Rs.50,000, and on repetition of the same offence, could result in punishment being doubled and/or cancellation of registration of the entity or revocation of any statutory business licenses. Herein, a heavier fine along with imprisonment as a punishment should be imposed rather than cancellation of licenses as revocation of license will inflict injury on unrelated and innocent parties associated with the business of the employer as well. Moreover, the complainant is required to submit six copies of the complaint to the ICC. There should not be any need to submit six copies of the complaint before complaints committee. It should be the duty of the employer to provide copy of the complaint to all the members of the committee.

Conclusion

Sexual harassment is considered as a violation of a woman's fundamental right. It is against the human rights standards set at the international level through conventions such as the UDHR or the CEDAW. Prior to the year 1997, India neither had a legislation combating the menace of sexual harassment at workplace nor was there any sturdy judicial pronouncement dealing with the same apart from the Constitutional safeguards. The Sexual Harassment Against Women at Workplace Act as an alternative structure and process is welcome, but needs much alteration. Helping the victims to make informed choices about the different resolution avenues, providing trained conciliators, settlement options by way of monetary compensation, an inquisitorial approach by the Committee must be adopted. After almost 4 years of its enactment, consideration must be given to the criticisms against it and thereby, adopt provisions that answer the need of the hour. The legislation appears to be further excessive in the redressal mechanisms which it has established by leaving short-comings in the powers and functions of these non-judicially equipped bodies. Moreover, some provisions could have been more leaning to the female victim, such as the provisions for conciliation and punishment for false or malicious complaints. The problematic provisions and unanswered questions present a conundrum for application of the Act, and should to be clarified for effective implementation of the Act.

Moreover, the utmost need at this time is a change in the mindset to understand the fears, compulsions, and pressures on women victims. Instead of blaming the victim for having invited such sexual advances, it is important to shift the blame to the perpetrators. The law should also bring within its ambit the situations faced by men as it also goes on to hamper their productivity just like it affects the over-all well-being of an aggrieved woman.

Q29. Explain the salient features of the SCs and STs (Prevention of Atrocities) Act, 1989.

INTRODUCTION

The Preamble of the Constitution of India itself talks about the equal status of the citizens of India. The constitution speaks about sovereign, socialist, secular, democratic republic, it also grants equality, but the tyranny of this society even now there is no equality. Dr. Ambedkar dreamt of a social and economic equality. The Constitution of India was made keeping all this consequences in mind. The part III of the Constitution which talks about the fundamental rights tried to abolish this caste system but failed. Article 14 which talks about right to equality before law, according to this article every person is equal in the eyes of law, it emphasized on prohibition of discrimination on grounds of color, race, religion, caste, gender, place of birth, etc. Article 17 abolishes the practice of untouchability in 1950. According to the provision of this article "enforcement of any disability arising out of untouchability" is a punishable offence in accordance with law. As per Article 46 states "The State shall promote with special care the educational and economic interests of the weaker section of the people and in particular of the Schedule Castes and Schedule Tribes, and shall protect them from social injustice and all forms of exploitation".

ORIGIN AND DEVELOPMENT OF THE ACT

When all the provisions of the Constitution failed to implement the equality among the Indian society and also failed to remove the practice of untouchability, at that time a new law was needed and then came the Untouchability (Offences) Act 1955 but the lacunae and loopholes of this act impelled the government to project a major overhaul of this legal instrument. From 1976 onwards the Act was refurbished as the Protection of Civil Rights Act. Despite the various measures adopted by government to remove this gap between lower and upper caste and to protect the dalits from humiliation, disrespect, offences, indignities and

harassment they still remained a vulnerable category. After being educated with their rights when they try to assert them and also when they speak against the practice of untouchability against them the vested interest cow them down and terrorize them

The normal provisions of the existing laws like the Protection of Civil Rights Act 1955 and Indian Penal Code have been found inadequate to check these atrocities continuing the gross indignities and offences against Schedule Caste and Schedule Tribes. Recognizing these existing problems the Parliament passed "Schedule Caste and Schedule Tribe (Prevention of Atrocities) Act, 1989 and Rules, 1995.

MEANING OF ATROCITY

The word atrocity was unknown before the enactment of atrocities act in 1989. In legal parlance, the act understands the term to mean any offence that is punishable under section 3(1) and section 3(2).

Even though of this section, the meaning of atrocity in specific terms are,

1. Atrocity is an "expression commonly used to refer to crimes against the SCs and STs in India".

2. It "denotes the quality of being shockingly cruel and inhumane, whereas the term crime relates to an act punishable by law".

3. It implies "any offence under the Indian Penal Code committed against SCs and STs by non SC and ST persons. Caste consideration as a motive is not necessary to make such an offence of atrocity".

OBJECTIVE OF THE ACT

The objective and purpose of this more punitive piece of legislation was sharply outlined when the Bill was introduced in Lok Sabha:

"Despite various measures to improve the socio economic conditions of the SCs and STs, they remain vulnerable… They have, in several brutal incidents, been deprived of their life and property… Because of the awareness created, through spread of education, e.t.c, when they assert their rights and resist the practice of untouchability against them or demand statutory minimum wages or refuse to do any bonded and forced labor,

the vested interests try to cow them down and terrorize them. When the SCs and STs try to preserve their self-respect or honor of their women, they become irritants for the dominant and the mighty…

Under the circumstances, the existing laws like the Protection of Civil Rights Act 1955 and the normal provisions of the Indian Penal Code have been found to be inadequate to check and deter crimes against them committed by non-SCs and non-STs… It is considered necessary that not only the term 'atrocity' should be defined, but also stringent measures should be introduced to provide for higher punishment for committing such atrocities. It is also proposed to enjoin on the States and Union Territories to take specific preventive and punitive measures to protect SCs and STs from being victimized and, where atrocities are committed, to provide adequate relief and assistance to rehabilitate them *"*

Therefore the objective of the act is very clear which emphasize the intention of the Indian state to provide justice to the Dalit class and also abolish this ill practice of untouchability.

SALIENT FEATURES OF THE ACT

The rations of Atrocities Act and Rules is generally a division into three different categories, which covers a list of problems or issues related to atrocities against SC/ST people and their position in society.

- The first category contains provisions related to criminal law. This category in generally establishes criminal liability for a number of specifically defined crimes, and also extends the scope of certain categories of penalizations given in the Indian Penal Code (IPC).

- The second category contains provisions for relief and compensation for victims of atrocities.

- The third category contains provisions that set up special authorities for the exertion and monitoring of the Act.

THE SALIENT FEATURES OF THE ACT ARE,

1. Creation of new types of offences not in the Indian Penal Code (IPC) or in the Protection of Civil Rights Act 1955 (PCRA).

2. Commission of offences only by specified persons i.e. barbarity can be committed only by non-SCs and non-STs on members of the SC or ST communities. Crimes among SCs and STs or between STs and SCs do not come under the purview of this Act. *Kanubhai M. Parmar v. State of Gujarat,* that if the offence is committed by persons belonging to Scheduled Caste against Scheduled Caste member, they cannot be prosecuted and punished under the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, 1989

3. Defines various types of atrocities against SCs/STs. Section 3(1) i to xv and 3(2) i to vii.

4. Prescribes strict punishment for such atrocities (Section 3(1)i to xv and 3(2)i to vii).

5. Enhanced the quality of punishment for some offences (Section 3(2) i to vii, 5).

6. Enhanced minimum punishment for public servants (Section 3(2) vii).

7. Penalty for delinquency of duties by a public servant (Section 4).

8. Attachment and forfeiture of property (Section 7).

9. Externment of potential offenders (Section 10(1), 10(3), 10(3)).

10. Creation of **Special Courts** (Section 14). In *Mangal Prasad v. Additional Session Judge* the court held that the Court below has been appointed as a special Judge within the meaning of Section 2(d) of the Act but unless the accused is sent to him by the Magistrate, he cannot take any cognizance of the offence under Section 14 of the said Act and he also cannot act as a Magistrate in exercising his power or in taking the cognizance of the Act like a Magistrate or to send that complaint petition to the concerned police station under Section 156 (3), Criminal Procedure

11. Appointment of Special Public Prosecutors (Section 15).

12. Empowers the government to impose collective fines (Section 16).

13. Erasure of arms licenses in the areas labeled where an atrocity may take place or has taken place (Rule 3iii) and clasp all illegal fire arms (Rule 3iv).

14. Grant arms licenses to SCs and STs (Rule 3v).

15. Denial of anticipatory bail (Section 18).

16. Denial of probation to convict (Section 19).

17. Provides reimbursement, relief, and rehabilitation for victims of atrocities or their legal heirs (Section 17(3), 21(2) iii, Rule 11, 12(4)).

18. Identification of atrocity prone areas (Section 17(1), 21(2)vii, Rule 3(1)).

19. Setting up hindrance to avoid committing of atrocities on the SCs amongst others (Rule 3i to 3xi).

20. Setting up a mandatory, periodic monitoring system at different levels (Section 21(2)v):

- District level (Rule 3xi, 4(2), 4(4), 17).
- State level (8xi, 14, 16, 18).
- National level (Section 21(2), 21(3), 21(4)).

Along with the rules, it provides a framework for monitoring the state response to the atrocities against Scheduled Castes and Scheduled Tribes. According to the Act and Rules, there are to be monthly reports (from the District Magistrates), quarterly review meetings at the district level by the District Monitoring and Vigilance Committee (DVMC) and half yearly reviews by a 25-member State Monitoring and Vigilance Committee (SVMC) the chaired by the Chief Minister. The pursuance of every Special Public Prosecutor (SPP) will also have to be reviewed by the Director of Public Prosecutions (DPP) every quarter. Annual reports have to be sent to the central government by 31 March every year.

THE SC AND THE SC (PREVENTION OF ATROCITIES ACT, 1989) ACT IN BRIEF

SHORT TITLE, EXTENT, AND COMMENCEMENT

Section 1 Prevention of Atrocities Act, 1989 deals with the title, extent, and commencement of the Act. The area where it will have its operation is the whole of India except the State of Jammu and Kashmir which occupies a special constitutional position. Therefore this act is applicable will be followed by whole of India but not in the State of Jammu and Kashmir as because they have different laws prevailing there.

DEFINITIONS

Section 3 of this act deals with definitions of atrocity, code, schedule caste and schedule tribe, special court, special public prosecutor, and also says that any amendments made in this act will be enforceable in the area where it is entitled to execution.

PUNISHMENT CLAUSE

Section 4 of the Act deals with punishments for offences of atrocities. If an offence is committed by an upper caste member upon a lower caste member, such person shall be liable for punishment under section 4 of the act. This section contains substantive penal clauses. Section 3 (1) (i) to (xv) and section 3 (2) (i) to (viii) describes various offences of heinousness and also provide different punishment and remedies.

USE OF FORCE AGAINST DALITS

Sections 3 (1) (i) to 3 (1) (iii) specifies the offences of atrocities by use of force. If a member of upper class use force against the member of a Scheduled Caste or a Scheduled Tribe like forcing him to drinking him or eat any inedible or filthy substance or does any acts with intent to cause injury, insult or annoyance to any member of a Scheduled Caste or a Scheduled Tribe by dumping excreta, waste matter, corpse or any other offensive substance in his premises or neighborhood or forcibly removes clothes from the person of a member of a Scheduled Caste or a Scheduled Tribe or parades him naked or with painted face or body or commits any similar act which is derogatory to human dignity, shall be liable for minimum mandatory punishment of six months which may be extend to five years and with fine.

It must be made specifically clear that in order to constitute an offence of atrocity under Section 3 of the Scheduled Castes and Schedule Tribe Act 1989 the offence must be committed by:

1. A person who is not a under the purview of schedule caste and schedule tribe

2. In respect of a member of a Scheduled Caste or a Scheduled Tribes; and

3. The offence must be committed in public view.

WRONGFUL POSSESSION

The Act provides that if any non-Scheduled Caste and non-Scheduled tribes wrongfully occupies or cultivates any land owned by, or allotted to, or notified by any competent authority to be allotted to a member of a Scheduled Caste or a Scheduled Tribe or gets the land allotted to him transferred, shall be liable for minimum mandatory punishment of six months which may extend to five years and shall liable for fine.

In *Kashiben Chhaganbhai Koli* v. *State of Gujarat, 42* a member of Scheduled Caste was dispossessing from his land by upper caste member. The arraigned agreed to sell his land to complainant and handed over possession to him. The accused thereafter forcibly entered upon land and damaged crops. Eye-witness supported the claim cases of the complainant and the accused was convicted under section 3(1) (v) as well as for cheating and damaging crops.

BEGGAR OR BONDED LABOUR

If the aristocrats compels or persuades a member of a plebians or Dalits to do 'begar' or other similar forms of forced or bonded labour other than any compulsory service for public purposes imposed by Government shall be liable for minimum mandatory punishment of six years which may extend to five years and shall liable for fine. "Begar" means involuntary work without payment. The word begar constitutes of the elements:-

(a) it is to compel a person to work against his will.

(b) he is not paid any remuneration for work.

"Other similar forms of forced and bonded labour", it means to compel a person to work against his will.

Besides this Act, the constitution of India also provides a similar provision. The Constitution of India provides that traffic in human beings and begar and other similar forms of forced labour are prohibited and any

contravention of this provision shall be an offence punishable on accordance with law. Article 23 of the constitution is distinct from the section 3(1)(iv) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act 1989 because section 3(1)(iv) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act1989 applicable to Scheduled Castes and Scheduled Tribes only but Article 23 of the Indian constitution provides fundamental right to all the citizens of India.

FORCE TO VOTE

If non-scheduled castes and non-scheduled tribes forces or intimidates a member of a Scheduled Caste or a Scheduled Tribe not to vote or to vote to a particular candidate or to vote in a manner other than that provided by law, shall be liable for minimum mandatory punishment of six years which may extend to five years and shall liable for fine.

CAUSING HUMILIATION IN PUBLIC PLACE

If creams of the society or the upper class intentionally insults or intimidates with intent to humiliate a member of a Scheduled Caste or a Scheduled Tribe in any place within public view, shall be liable for minimum mandatory punishment of six years which may extend to five years and shall be liable for fine.

In order to constitute the accusation of an offence of atrocity under Section 3 of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, there must be an allegation that the accused has insulted intentionally or intimidated the complainant and such insult or intimidation was done with the intention to humiliate the complainant.

The most common way to commit cruelty against Scheduled Caste is to call them by their caste with the sole intention of injuring their sentiment and feeling. It is rightly observed by Hon'ble Court in *Kaliya Peru Mal v. State of Madras* that the specific averments made in the complaint showed that the accused abused the complainant by her caste name, in filthy language, thereby causing insult and intimidation to her. The court held that all this amounted to an offence under Section 3 of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989.

In *State of Kerala* v. *U.P. Hassan50,* the accused called the complainant by term "*Pulaya Nadi*". The word '*Pulayadimon*' in Malayalam indicates meaning 'adulterer' or 'son of a prostitute'. The court held that this term did not have any caste implication and since accused had no motive to insult the complaint by his caste

name, no offence under Section 3 of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 was committed by the accused.

The facts of *Shayam Singh alias Dhannu and Another* v. *State of M.P.51* is almost similar to the facts narrated as above. The accused allegedly called the complainant by caste name (Chamar in this case). The court held that there was no offence because taking the name of caste of any citizen of this country itself is not the offence till it is not taken with the intention to humiliate that person because of his community.

ASSAULT WITH INTENT OF OUTRAGING MODESTY OF WOMEN

At any time the upper class, assaults or uses force to any woman belonging to a Scheduled Caste or a Scheduled Tribe with intent to dishonor or abuse her modesty, shall be liable for minimum mandatory punishment of six months which may extend to five years and shall liable for fine.

An Offence under Section 3(1)(xi) of Act is an aggravated form of offence under Section 354, IPC. Section 3(1)(xi) of the Act which deals with attack or use of force on any woman belonging to dalit class with intent to or dishonour or outrage her modesty is an annoyed form of the offence under Section 354, IPC. The only difference between Section 3(1)(xi) and Section 354 is essentially the caste or the tribe to which the victim belongs. If she belongs to Scheduled Caste or Scheduled Tribe, Section 3(1) (xi) is made applicable. The other difference is that in Section 3(1)(xi) dishonor of such victim is also made an offence.

In *Karan Singh* v. *State of Haryana*, complainant and her companion were molested as they were women. The court held that as such women were not molested because of the fact that they belonged to Scheduled Caste, hence, accused could not be prosecuted for atrocities on Scheduled Caste woman under Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act 1989.

Ashok Bapurao Thorat v. *State of Maharashtra & Anr.*, In urgent case, allegation against the accused that he had sexual intercourse with complainant belonging to the scheduled caste. The contents of FIR showing that the complainant was consenting party and there was love affair between them. The court held that complainant was not subjected to consummation because she was scheduled caste woman. The accused is not liable for punishment under section 3(1)(xi).

In *Mahendra kumar v State of Madhya Pradesh* ,the prosecutxic Parmila Bai lodged a written report on 30-3-1992, in the police Station that on 28-3-1992, in night at about 9o'clock, the appellant Mahendra Kumar made

an assault and tried to outrage her modesty near the house of Kotiwarin, while she was returning to her house with her aunt Agasiya Bai after watching moving on television. On the basis of the report of the protsecutrix, an FIR was registered for an offence punishable under section 3(i)(xi) of the act and section 354 of the IPC against the appellant by police station, Arjunda. The allegations against the appellant are that he caught the hand of the prosecutrix and told her also ' *Chalo Waha Le Jayenge',* on which the prosecutrix called her aunt. Her aunt also hurled abuses on the appellant and he ran away. Thereafter, the prosecutrix came to her house and narrated the incident to her mother.

ANALYSIS OF THE ACT

OFFENCES AND PENALTIES

Section 3(1) identifies 15 different acts like forcible feeding of invidious substances, threatening to vote, contaminating of water ordinarily used etc. as punishable offence with a minimum sentence of 6 months imprisonment which may extend to five years and fine.

Section 3 (2) identifies serious offences like fabricating false evidence and causing execution of an innocent SC/ST etc., where the punishments are seven years or life imprisonment or death. The offences can be committed only by persons who neither are SCs nor STs. It was unsuccessfully contested that, Section 3 is violating the equality clause of the constitution as it makes a hostile discrimination against the caste Hindus. Section 3 was upheld interpreting it in the light of the Preamble, causing the disappearance of evidence or screening of offender of these offences shall be punishable with the punishment provided for that offence.

Any public servant who is not an SC or ST, willfully neglecting duties under this Act shall be punishable with a minimum sentence of six months extending to one year. If the public servant is an SC or an ST and he plots with the slayers by willful neglect, he/she cannot be punished. Removal of persons likely to commit offences for a maximum period of two years under this Act may be done by experiment orders of special court. Section7 provides for forfeiture of property used by the captive in favor of the state. The property can be attached during the trial and later on conviction surrendered.

Provisions of anticipatory bail under S.438 of Criminal Procedure Code 1973 shall not relate to any case involving the arrest of any person under this Act as laid down in Section18. The constitutional validity of this section was challenged vis a vis Article 21. It was held that S.18 was a procedure established by law and therefore not violative of Article 21. Mumbai High Court has granted anticipatory bail on the ground that there was no prima facie case under the Act made out in the complaint. Section 360 of the Code and Probation of Offenders Act 1958 shall not apply to cases where the guilty person under this Act is above eighteen years old.47PAA shall override other laws & customs & usages.Customs etc. justifying or enabling practices declared offences cannot be pleaded as defenses.

IMPLEMENTATION

Prevention of Atrocities Act ensures proper implementation by requiring the State Government to notify a court of Session to be a special court and to appoint a special public prosecutor for every special court. State Govt. has powers to impose & realize collective fines from residents of any locality for committing offences under this Act. Preventive action and effective implementation of PAA are duties on the State Govt. Section 23 of PAA empowers the Central Govt. to make rules for carrying out the purposes of the Act. Central rules under this Act were notified in 1995-Scheduled Castes & the Scheduled Tribes (Prevention of Atrocities) Rules, 1995

Preventive and precautionary measures are to be taken by the State government is listed out in Rule 3. Under this rule the government is under a duty to identify the area where it has reason to believe that atrocity may take place or there is an apprehension of reoccurrence of an offence under the Act; set up awareness centers and organize workshops; encourage NGOs; deploy special police force in the identified area etc. Rule 4 requires the government to effectively supervise the prosecution by preparing a district wise panel of eminent senior advocates (at least seven years practice) for conducting the cases under this Act in the special courts and pay them fees on a scale higher than the other panel advocates of the state. Rule 5 is about information to police on commission of offence under this Act. Rule 6 requires the district Magistrate etc. to conduct spot inspection on any information of atrocity within his jurisdiction. Investigating officers shall be appointed after taking into account his past experience, sense of ability etc. provides Rule 7. Rule 8 requests the state to set up a SCs & STs Protection Cell to be responsible for reviewing the identified area & maintaining tranquility there, enquiring as to refusal to lodge complaint, negligence by public servant, etc. Under Rule 9, State shall nominate a Nodal Officer who shall coordinate the functioning of the officers appointed to implement this

Act. Rule16 requires constitution of state-level vigilance & monitoring committee with chief minister as head & Rule17 requires such a committee at the district level.

REHABILITATION

Section 21(2) seeks to ensure social & economic rehabilitation of the victims of the atrocities. It lays down measures to provide legal aid to victims & traveling & maintenance expenses to witnesses & victims during investigation & trial Rule11 lays down that every victim of atrocity or of him/her dependents & witnesses shall be paid to & fro rail fare by second class in express/mail passenger train or actual bus or train fare from his/her place of residence to place of investigation The minor, women, old, disabled victims/witnesses shall be entitled to be accompanied by an attendant of his/her choice. There is provision to pay daily maintenance allowances not less than minimum wages and diet expenses. These allowances are to be paid immediately or within three days. In case of offences under Section 3, the victim shall be reimbursed the medical expenses including blood transfusion, meals etc.

R.12 calls upon the District Magistrate to make arrangements for providing immediate relief in cash or in kind or both to the victims of atrocity, their family members & dependents, including food, water, clothing, shelter, medical and transport facilities & other essential items necessary for human beings. The norms & scale of relief is provided in the schedule to the Rules. The relief provided in respect of death, or injury to, or damage to property shall be in addition to any other right to claim compensation in respect thereof under any other law for the time being in force. Rule 13 feels necessity for the state government to take care in appointing persons with proper inclination and understanding of the problems of SCs and STs and further ensure that SCs and STs are adequately represented in the administration and police force. Rule 14 lays down a specific duty of the state to make necessary provisions in its annual budget for providing relief and rehabilitation facilities to the victims of atrocities.

AMENDMENT IN SC AND THE ST (PREVENTION OF ATROCITIES) ACT, 1989

The Prevention of Atrocities (POA) Act, 1989 was altered to include new offences and to guarantee speedy justice to sufferer. The amendments to the act were originally issued as an authorization by the previous UPA government in March 2014. The NDA government has now got the changes passed in both the houses of

parliament. After the amendments, certain changes became necessary to the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Rules, 1995. The previous rules are now modified and were notified on 14th April, 2016.

MAJOR AMENDMENTS IN THE ACT

Atrocity against the SCs and STs have been on the rise. A total of 39408 crimes against SCs were reported in the year 2013 while the number of crimes against SCs has gone up to 47064 in 2014. There has been an appeal to amend the existing act and to include more offences and to ensure relief & speedy justice to the victims.

The following major changes have been made now via the amendment.

- Rationalization of the phasing of relief amount payment to victims for various offences of atrocities. The rules also specify relief amount for various offences of atrocities.

- Not linking remittance of any part of relief amount with the requirement of medical examination for non-invasive kind of offences against women like sexual harassment, gestures or acts intended to insult the modesty, to disrobe, voyeurism, stalking etc.

- Provision of relief for offences of rape and gang rape.

- Rise in the existing sum of relief amount depending upon the nature of the offence, while linking it with the Consumer Price Index for Industrial Workers

NEW OFFENCES OF ATROCITY

The following new offences have been added to the list of atrocities

- Tonsuring of head, mustache, or similar acts which are derogatory to the dignity of members of SCs & STs

- Garlanding with Chappals

- Denying access to irrigation facilities or forest rights
- Dispose or carry human or animal carcasses, or to dig graves, using or permitting manual scavenging
- Dedicating an SC/ST woman as Devadasi
- Abusing in caste name, perpetrating witchcraft atrocities
- Imposing social or economic boycott
- Preventing SC/ST candidates from filing of nomination to contest elections
- Hurting an SC/ST woman by removing her garments
- Forcing a member of SC/ST to leave house , village or residence
- Defiling objects sacred to members SCs/STs
- Touching or using words, acts or gestures of a sexual nature against members of SCs/STs

EXCLUSIVE SPECIAL COURT FOR SPEEDY JUSTICE

The amendments to the act also authorize establishment of exclusive Special Courts and appointment of Exclusive Special Public Prosecutors to try the offences under this act. This is made to enable speedy justice and immediate disposal of cases.

The Special Courts have been mandated to take direct cognizance of offence and as far as possible, completion of trial of the case within two months, from the date of filing of the charge sheet.

The State Governments have been asked to prepare a panel of senior advocates who have been in practice for not less than seven years for each District, for conducting the cases filed under this act. The State Governments have also been asked to review the performance of these advocates at least twice in a calendar year. They are also asked to review various reports received, investigation made and preventive steps taken by

the District Magistrate, Sub-Divisional Magistrate and Superintendent of Police, relief and rehabilitation facilities provided to the victims etc.

ENHANCEMENT IN RELIEF AMOUNT

The standard for relief amount has also been justified including enhancement of the relief amount for certain offences. Relief amount in case of certain offences are

- Rs 85,000 to the victim in case of offences like avoiding from voting, filing nomination, Forcing, obstructing a holder of office of Panchayat or Municipality from performing duties etc.
- Rs 5,00,000 to the victim in case of rape and Rs 8,25,000 in case of gang rape
- Rs 8,25,000 in case of murder
- Rs 1,00,000 in case of deception or threatening a social or economic boycott
- Rs 1,00,000 in case of preventing a SC/ST entering any place of worship which is open to the public etc

A new chapter on the 'Rights of Victims and Witnesses' has also been added to the act. The term 'willful negligence' of public servants at all levels, starting from the registration of complaint, and covering aspects of dereliction of duty under this Act has been clearly defined.

Presumption to the offences has been added to the act, i.e., If the accused was acquainted with the victim or his family, the court will presume that the accused was aware of the caste or tribal identity of the victim unless proved otherwise.

GAP BETWEEN VARIOUS LEGISLATION AND PRACTISE

In the end the question is that why do higher caste persons continue to practice untouchability, and discrimination? What are the major reasons for the non- implementation of Constitutional legislations enacted to protect the interests of Dalits? Why do Non dalits resort to physical and other violence whenever the dalits try to gain a lawful access to Human Rights and equal participation in social, political, religious, cultural and economic sphere of community life? The reasons for the widespread practice of untouchability, atrocities, other violent reaction by the higher caste as well as non-implementation of the various provisions of the constitution as well as legislations are to be found in continuing belief and faith of the high caste Hindus in the sanctity of institution of caste system and untouchability. On the one hand Dalits are being still excluded from the day to day communitarian interactional relationship based on the caste hierarchy and on the other hand some sectarian interests are forcing them, directly or indirectly to remain within the fold of the Hindu Society to present this society as a "homogenized Hindu Whole" and thereby ensuring their majority status.

Secondly, as argued by Ambedkar, most of the Dalits—being illiterate, ignorant and god-fearing—themselves believe in caste system and practice caste discrimination among themselves, probably not to the extent the upper caste do. They, therefore, remain divided and are unable to take a collective action against caste oppression.

Third, although the SCs/Dalits alone account for over 16% of total Indian population, they constitute too small a number in each village to muster enough courage for taking the support of law and going to the police and the judiciary to punish the caste Hindus violating their rights

Fourth, most of the Dalits are landless and depend on the very castes that violate their rights and dignity to earn their living. So, though there are laws to their support, they would not dare using them to protect their source of living.

Fifth, seeking justice through the special laws is not an easy task, since it demands adherence to number of procedures on the part of the victims, accused, police, the special public prosecutor and others concerned at every stage of the case, which is often turn out to be very costly, tiresome and time-consuming, particularly for the victims. Invariably, it is during this time the accused indulges in number of mischievous activities including bribing the police, tampering the evidences, pursuing the victims for an out of court settlement of the case and threatening the victims and their witnesses etc. And if they have to pursue the case despite all these, it would be at cost of their means of sustenance, dignity, peaceful living, and sometimes their life itself

Sixth, overwhelming caste loyalties and sentiments often influence the decisions of the police and judiciary. The explanation of Ambedkar regarding why most cases of caste discrimination and violence end in acquittal is true even in the present context. When the law enforcement agency, the police and the judiciary, does not seem to be free from caste prejudice—since they are very much part of the same caste-ridden society—expecting law to ensure justice to victims of caste crimes is rather an impractical solution to this perennial social problem.