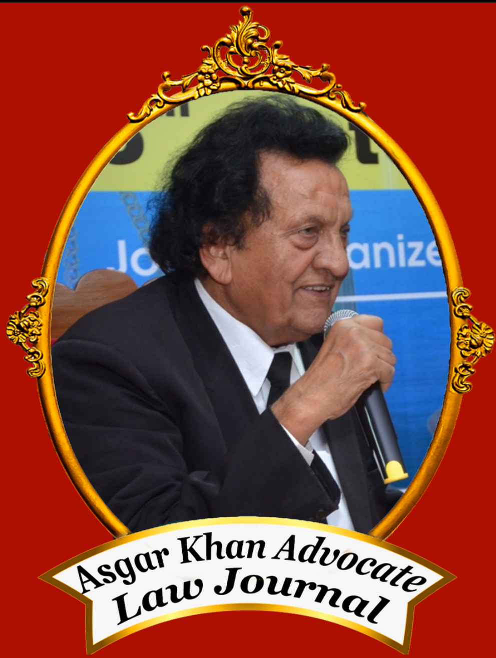
Online ISSN 2582-6476



ASGAR KHAN ADVOCATE LAW JOURNAL

Volume 3, Issue 2

July, 2022

Special Edition

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CORPORATE INSOLVENCY: AN OVERVIEW IN REFERENCE TO INDIAN ECONOMIC SYSTEM

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ABSTRACT

The “Insolvency and Bankruptcy Code, 2016” has created a hope when the Indian Banking and Financial system is facing the issue financial distress due to accumulation of NPA (Non-Performing Assets). There was a need for a proper mechanism for valuation of assets, evaluation of the options for corporate bodies in case of liquidation, and protection of the interest of the stakeholders. In the insolvency ecosystem the IBC, 2016 provide time bound procedures, distinction among the creditors, regulatory mechanism. On “January 31, 2020” the president of India admitted that about 3.5 lakh crore have been recovered with the help of the IBC, 2016 by the Indian Banking system.’[2] The article aims to give a holistic overview of the development and importance of corporate insolvency regulation in India.

INTRODUCTION

A corporate body is composed of various stakeholders who collectively work for maximizing the its assets valuation and protecting the stakeholder’s interest at large. In the corporate world, corporate bodies play a significant role in society in many ways. A corporate body has multiple sources for raising its capital for running the business mainly through equity or debt. The shareholders who invest in the company usually control a corporate body by exercising their voting rights. But generally, debt creates an overburden and makes a way for its liquidation. In India, the previous debt settlement system entailed a series of legal mechanisms for different bodies being used at the same time. This includes the “Companies Act 2013”, the “Securitization and Reconstruction of Financial Assets and Enforcing of Security Interest Act, 2002 (SARFAESI)”, the “DRT (Debt Recovery Tribunal) Act 1993”, “Recovery of Debts due to Banks and Financial Institutions Act, 1993 (RDDB Act)” and the “Sick Industrial Companies Act' (SICA) of 1985”. Overall, these laws lay out a different

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[2] Insolvency and Bankruptcy News (January- March,2020, Vol 14), Page 1, available at <NewLetter_January to March_20-05-2020_Singal Page_Cut Margine.cdr> (ibbi.gov.in))

procedure for the recognition of assets, acquisition and construction of debt to expedite the settlement of arrears debts. But so many laws have led to a great deal of confusion in the legal system which has created an urgent need to have a single regulatory mechanism for reviving a sinking entity. With time it has been observed that Indian banking and finance system has faced a huge amount of NPAs (non-performing assets) and broken the back of the Indian economic system. In addition to it the lengthy delay times for creditors to obtain their money back from non-paying debtors have created a burden on Indian economic and financial system. The 'Insolvency and Bankruptcy Code, 2016 ' is an attempt to reform the India's Banking and financial system including corporate bodies, individuals and prevent them from collapsing due to overburden debt. In the IBC, 2016 an attempt has been made to address the past shortcomings at a large scale with the aim of labelling these issues through regulation and efficiency. Further it deals with the issues relating to the debt restructuring and settlement of defaults of the company, cooperative firms, limited credit cooperation, individual etc.

Timely disposal of cases is an important element of any justice delivery system. And the "Bankruptcy Law Reforms Committee (BLRC)" also emphasised on importance of time given in IBC,2016. The Committee noted that:[3]

> "*For two reasons, speed is critical to the bankruptcy regime's operation. Firstly, while a "down period" can assist keep a company afloat, key decisions can't be taken without complete ownership and control transparency. The company will falter and collapse if there is no strong governance. The longer the delay, the more likely settlement is the only answer. Second, the liquidation value tends to decline over time, as many assets suffer high rates of economic depreciation. From the creditors' point of view, a good performance can usually be achieved by selling the business as a going concern. If delays lead to liquidation, there is a loss in value. Even in the case of liquidation, there is less recovery in case of delays. Therefore, delays cause a loss of value. Therefore, to achieve a high recovery rate, it is primarily a matter of identifying and combating the causes of delay.*"

The IBC,2016 has provide the time frame to complete whole process. Beside its importance of obtaining the details of a timely decision for non-payment of debts are equally important and obtaining timely accurate and unambiguous information can prevent an entity from

[3]*Eradi et al Report of the high-level committee on law relating to insolvency and winding up companies, Ministry of Law, Justice and Company Affairs, Government of India ,40 (2000)*

collapsing. It is important that the CIRP is to be completed within the timeline and all issues are to be addressed in the time limit. Similarly in the case of "*IDBI Bank Ltd v. Jaypee Infratech Ltd*",[4] the court has observed the importance of IBC, 2016 for speeding the resolution process of corporate bodies. Further the "Supreme court" in another case[5] the "Supreme Court of India" held that IBC, 2016 has been enacted for protecting the interest of the public and promoting the corporate governance. The "Supreme court of India" admitted that the IBC,2016 is beneficial legislation to save the life of corporate body.[6]

Corporate Insolvency: An Overview

The "Entry 9" of "List III (Concurrent List)" in the "Seventh Schedule" of the "Constitution of India" deals with the "Bankruptcy & Insolvency" and both the Centre and State governments are empowered to make law on this subject. Similarly, the statues like "Companies Act, 2013," the "Recovery of Debts due to Banks and Financial Institutions Act, 1993 (RDDB Act)", the "Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 **(**SARFAESI Act**)"** and "Sick Industrial Companies (Special Provisions) Act, 1985 **(**SICA**)".** Similarly, the individual insolvency was dealt by the "Provincial Insolvency Act, 1920" and the "Presidency Towns Insolvency Act, 1909." The presidency towns of Calcutta, Bombay and Madras were regulated through "Presidency Towns Insolvency Act, 1909" and all provinces of India by the the "Provincial Insolvency Act, 1920". Thus individuals as well as partnership firms were governed by these two Acts. Although the SICA was enacted to deal the issues relating to the sick industries, their identification and providing remedial measures. But Small-scale industrial units and ancillary units were exempted from SICA's jurisdiction. The government time to time incorporated many committees to reform the Indian economic and banking system for e.g., in 1991 and in 1998 on the recommendation of the "Narasimham Committee" the government enacted "Recovery of Debts Due to Banks and Financial Institutions (RDDBFI) Act, 1993" and "Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act (SARFAESI), 2002". Uniform Comprehensive "Bankruptcy code" was recommended by the N L Mitra Committee. J J Irani Committee recommended for major changes for speedy liquidation and restructuring process. The "Bankruptcy Law Reforms committee (BLRC)" strongly proposed for formation of uniform Insolvency and Bankruptcy Code.

[4] CA No. 26/2018 in Company Petition No. (1B)77/ALD/2017
[5] Chitra Sharma and Ors. *v*. Union of India, W.P. (C) No. 744 of 2017
[6] Swiss Ribbons Pvt. Ltd. & Anr. *v*. Union of India & Ors., (2019) 4 SCC 17.

These laws were inadequate to cover all issues relating to insolvency, which results in undue delays in resolution and recovery. There were many issues like delay in recovery, restructuring of defaulted assets created dissatisfaction among the lenders, financial failures of corporate bodies which were adversely affecting the credit and economic system of India. There were multiple forums like Board of Industrial and Financial Reconstruction (BIFR), Debt Recovery Tribunal (DRT), Debt Recovery Appellate Tribunals (DRAT), High Courts which to deal with issues relating to bankruptcy but this results in the overlapping jurisdiction. Therefore, the government has enacted the IBC, 2016 with the objective to consolidate all the existing laws relating to insolvency and bankruptcy which deals irrespective of the fact that the litigant or subject matter is an individual or body corporate. The "Bankruptcy Law Reforms Committee (BLRC)" had examined the insolvency system in India and to suggest the legislative changes accordingly. Now the "Insolvency and Bankruptcy Code, 2016" has replaced it, consolidate all provisions of these Acts and provide a speedy mechanism for Corporate Insolvency resolution process. The "Bankruptcy Law Reforms Committee (BLRC)" recommended for one and uniform code for resolving insolvency for all entities including corporate bodies and individuals because of fragmented framework for different system.

The Corporate Insolvency Resolution Process (CIRP) is legal process which includes initiation of proceeding for a Corporate Debtor under IBC, 2016 for protecting the interest of stakeholders and corporate bodies. This is initiated when a corporate body is at the verge of the liquidation. The Code provides both the recovery as well repair process of a corporate entity so as to reduce the risk at minimal level for creditors. In the case of "*Swiss Ribbons Pvt. Ltd. & Anr. v. Union of India & Ors*.,"[7] the court held that in the CIRP the primary focus is for revival and survival of the company from death by liquidation.[8] The Code encourages and facilitates the balance between resolution and liquidation. The resolution preserves and maximizes the corporate value for the stakeholders which a concern for most of the entities. The CIRP regulations allow a dissenting creditor to opt for exit at the liquidation value and thus it protects its interests. The Code also require that a resolution plan should contain details of the interests of all stakeholders (Financial creditors, operational creditors, debtors etc.).

[7] (2019) 4 SCC 17

[8] *Id.*

The Supreme Court in "*Committee of Creditors of Essar Steel India Limited through Authorized Signatory* v. *Satish Kumar Gupta & Ors*",[9] emphasised that balance should be made among all stakeholders by CIRP and that can be obtained by a feasible and viable resolution plan which is capable of effective implementation. “As per latest data by IBBI from 1 December, 2016 the CIRP came into force and since then a total number of 4541 CIRPs have commenced by the end of June 2021. Among these 2859 have been closed (653 have been closed on appeal or review, 461 have been withdraw, 1349 ended with order of liquidation and 396 with approval of resolution plans).” [10]

CIRP (Corporate Insolvency Resolution Process): Procedural Aspects And Analysis

The “Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016” defines “corporate insolvency resolution process (CIRP)” in the rule 3(b) as “corporate insolvency resolution process” means the insolvency resolution process for corporate persons”. The corporate insolvency resolution process involves the revival and rehabilitation. In case the CIRP fails or the creditors are of opinion that the business of the debtor is not in profitable manner and can’t be carried out the same in future also, then debtor should be liquidated and wound up. Four major bodies play main role in whole process of CIRP in IBC,2016, i.e., “Insolvency and Bankruptcy Board of India,” “Insolvency Professional Agencies,” “Insolvency Professionals,” and “Information Utility (IU).” The CIRP is initiated through an application. The financial creditors are given the power under the code to assess the viability of debtor’s financial structure, its revival and rehabilitation. In case the process fails or the creditors are of opinion that debtor should be declared insolvent because of inability to pay the debt or corporate body can carry on the business in a profitable manner, the process of winding up and liquidation starts.

After that an attempt is made to determine whether the defaulting debtor is capable of making payment or not. The “NCLT (National Company Law Tribunal)” appoints “Insolvency Resolution Professional (IRP)/ Insolvency Professionals (IPs)” for determining the assets. “Insolvency Resolution Professional (IRP)” endeavour for restructuring a company and repayments of debts. The sick company is required to arrange funds for its existence or may arrange a buyer for selling the company. In case of the approval of the resolution plan the process of takeover of corporate entity and paying off the remaining debts would be next step. But in case of failure of resolution plan due to any reason like non approval by the

[9] Civil Appeal No. 8766-67 of 2019.
[10] IBBI Newsletter April- June 2021 available at <April to June 2021-Single.cdr (ibbi.gov.in)>

“committee of creditors (COC),” or non-feasibility of such plan it shall be deemed that the CIRP process has been failed and the company will proceed for Liquidation.

CIRP is a time regulated process. The IBC, 2016 provides that maximum period of 180 days has been given for resolution plan to be approved, which shall be calculated from the date of commencement of CIRP. However, such period may be extended for a maximum period of 90 days only with the approval of concerned authority. If the resolution plan does not get the approval of COC (Committee of Creditors) then in such situation corporate body goes into liquidation.

The IBC,2016 has provided for voluntary and flexible insolvency procedure as per the evaluation by the creditors. The judicial intervention is minimal which not only made the process easy going but also preventing the overburdening of the judicial system. The whole process concentrates on balancing the interest of the creditors and debtors. It aims to make balance between the rescue proceedings and safeguarding the interest of the creditors. The developed countries legal mechanism based on this philosophy. The USA “Bankruptcy Code” provides a unform system that is applicable to all federal states and covers all bankruptcy cases in USA. In U.K, the UK Insolvency Act 1986 provides for “Company Voluntary Arrangements (CVAs)” to revive corporate structure from financial failure by providing multiple options provided by the administration for such process.

CONCLUSION

The NPAs are major concern for Indian banking and finance system. It not only affects adversely on the economic structure of the country but also impacts on the overall growth of India. It is a high time that these concerns should be address to achieve the constant and long-term growth of the country. For that a sound policy covering the major issues relating to NPAs and financial distress should be incorporated to reduce the defaulting rates of loans. The IBC, 2016 is a step in this direction, which is to be implemented in revolutionary way in time bound manner to protect an entity from going into financial distress. The IBC,2016 has given the supreme importance to the creditors, stakeholders of an entity and it can be expected that with proper implementation of the Code it can change the Indian insolvency system.

PROTECTION OF TRADE SECRETS: DOES INDIA NEED A SEPARATE LEGISLATION?

Yamini Atreya[1]

ABSTARCT

Trade secrets forms the core of all industrial activities, but only as an IPR in the text books in true sense rather in practice it still remains a secret for our intellectual property regime which has been indiscriminate in affording it any protection. It is yet to unveil itself; people are yet to realize the true potential as an IPR. Regardless of the fact that trade secrets remain neglected they have distinguished advantages over other IPR. Moreover, with the further liberalization of Indian economy, the protection of Trade Secret in India has become one of the most discussed issues in Intellectual Property laws. Due to lack of any direct statute providing protection to Trade Secrets, it has primarily has been given protection under various different statutes, interpretation of which has led to confusion regarding the current status of legal protection accorded to Trade Secret. And the contemptuous conditions in India are conducive and compelling to have statutory law on trade secrets, even the courts have also seen increased trade secret litigation in the recent past. The aim here is to analyse various decisions given by the courts regarding freedom of trade and freedom of contract to throw some light on the subject matter along with the legislations which exist for the protection of the same. This Article attempts to provide an overview of the existing legislations to protect Trade Secrets. It also seeks to discuss available remedies for the infringement of Trade Secret, and attempts to determine whether existing legal framework is sufficient to protect trade secret or do we need a separate specific trade secret legislation in India.

Introduction

With the advancement of technology, as well as the ease of sharing, copying and storing information in the digital world, one of the biggest challenges that business concerns face is the protection of their confidential business information. This information can include any formula, algorithm, practice, process, design, instrument, pattern, compilation of information, business strategies, proposals, client databases and drawings, devices, formulae or compositions which in turn termed as Trade Secrets. However, not all types of information qualify for protection under the patent and copyright laws, further, there are certain data which arises out of the daily business operations for which formal protection is not sought,

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but which remains valuable as it gives economic advantage to the establishments over its competitors in the market. Though Business concerns must share the information to several persons for effective and efficient functioning of their business and that is why it is vital that such information be kept confidential.

The protection of Trade Secret in India has become one of the important issues in the Intellectual Property Laws because of the lack of separate direct legislation for its protection, though it has been accorded protection under various different statutes that are open to interpretation which leads to confusion as to the current status of the legal protection of Trade Secrets. In today's growing competitive market, the protection of Intellectual Properties is very crucial because this is the most important tool to survive in the market and to maintain the competitive superiority over others as it is the knowledge and ideas that form the quintessential of trade in modern times which is the basis of any intellectual property. The Intellectual Property law ensures that rights of an owner of the intellectual property are not being infringed to his prejudice by a third party so that he exclusively[2] enjoys the fruit of his labour, skill, creativity and judgment.

Intellectual Property Rights such as Copyright, Trademark and patent fails to provide protection to the information where it is to be kept secretive or confidential as it requires registration with the government in the form of government filings that are expensive to obtain and enforce. Also, if the Trade Secret is to be registered with the government in the same way as of Copyright or Patent then it would automatically come into the public domain rendering the secret public. Moreover, Trade Secret is the creation of common law[3] as firstly it makes an action for the breach of trust or confidence independent of the Act and secondly copyright law does not grant any protection to trade secrets as there can be no copyright of any idea.[4] However, Trade Secrets can be obtained over a fully developed idea or substance of it. Also, to get protection under Trade Secret Law, an idea or information need not to be novel.[5] India is a party to various multilateral treaties which provide for the protection of Trade Secrets[6] but still Indian Parliament has ignored this fact and didn't comply with the

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[2] 'Exclusive' means 'restricted to the person'. See C. Soanes (Ed.), Compact Oxford Reference Dictionary,284(Oxford University Press,2003).

[3] Margreth Barrett, '*Intellectual Property',2nd Ed. West Group, 2001 at page 42.*

[4] *RG Anand v Delux Films AIR 1978 SC 1613.*

[5] See *Fraser v. Thames Television Ltd. (1984) QB 44.*

[6] Article 10bis of Paris Convention for the protection of Industrial Property, 1883 and Article 39.2 of the Agreement on Trade Related Aspect of Intellectual Property,1994. Though Paris Convention does not talk about Trade Secret as such, it accords protection against 'unfair competition' and thereby guarantees protection from dishonest practices in industrial or commercial matters.

constitutional obligation[7] so far ad not enacted any piece of legislation for the protection of Trade Secrets, though an attempt was made to bring a law for protection of Trade Secrets in the form of Draft National Innovation Act,2008. However, this bill has not seen the shine of the day.[8] Consequently, Trade Secrets are being protected in India by two means; either by common law action of breach of confidence, which is in effect breach of contract[9] or by common law principle of equity[10] or sometimes under the criminal law[11] or Information Technology Act,2000 which contains penal provision for breach of confidence and data theft. Due to which India is lagging behind developed legal systems of the world in providing protection to Trade Secrets and instead we are driven by the incoherent and inconsistent Judge Made Laws.[12]

Defining Trade Secret

A Trade Secret is "information of commercial value kept secret"[13] or it is "confidential information' or 'classified information'. Basically, it is such information which is not in the public record and all the necessary and reasonable efforts have been taken by the owner to maintain its secrecy and to protect it from the competitors in order to gain some financial gain or economic advantage. Trade secret law is for the promotion of the inventions and discoveries and hence it becomes important that such information should be protected to achieve this end. There is no specific legislation dealing with Trade secret laws in India unlike the other Intellectual Property like Patent, Copyright, Trademark and due to this gap, it has largely been governed or defined by the Courts. Recently the Draft National Innovation Act of 2008 has attempted to give a definition similar to that of 'confidential information' as given under Article 39.2 of Agreement on Trade-Related Aspects of Intellectual Property.[14]

A Trade secret is an information which is secret in the sense that it is not even known or accessible as a whole by the ones who would have generally known such information and has commercial value that gives an advantage over other competitors and has been subject to

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[7] Article 51 (c) of the Constitution of India obliges the State to foster respect for International Law and treaty obligations.
[8] Draft Bill can be accessed at The National Innovation Act of 2008 (prsindia.org), last accessed on 2 March,2021 at 22:26.
[9] Section 27 of Indian Contract Act, 1872 provides that a person can be restrained from disclosing confidential information by way of contract. However, such contracts must be reasonable; otherwise, they can be declared to be void under section 27 of the Act.
[10] *Fairfest Media Ltd v Ite Group Plc and others, (2015) 2 CHN 704 (Cal).*
[11] Indian Penal Code,1860 provides for criminal breach of trust.
[12] Zafar and Rahman, *supra* note 5 at page 349.
[13] Prof. Chandni Raina, Working Paper in 'Trade Secret Protection in India: The Policy Debate,' September 2015, CWS/WP/200/22.
[14] (hereinafter referred as TRIPs).

reasonable steps under the circumstances by the person lawfully in control of the information to keep it secret.

Trade secrets under TRIPs

There is no International Treaty specifically dealing with Trade secrets though Article 39 of TRIPs Agreement and Article 1711 of NAFTA provide a superficial reference to trade secrets. Trade secrets are referred as "undisclosed information" under the TRIPs Agreement and defines it as:

"An information is a trade secret if-

(1) it is not, as a body or in the precise configuration and assembly of its components, generally known among or readily accessible to persons within the circles that normally deal with the kind of information in question;
(2) has commercial value because it is secret, and
(3) has been subject to reasonable steps under the circumstances by the person lawfully in control of the information, to keep it secret."

The first country to enact a piece of legislation dealing with Trade secrets was United States of America. The Uniform Trade Secret Act (UTSA) of US provides an inclusive definition Trade secret as "information, including a formula, pattern, compilation, program, device, method, technique, or process that:

(i) derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use, and
(ii) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy."

This definition allows a business to protect the information which has potential value and which a business concern does not intend to utilise or which it has not presently develop fully. Moreover, a Trade secret need not necessarily be comprised of positive information, such as specific formula but can also include incomplete, suggestive, inconclusive research data that would give a person, skilled in the art, a competitive advantage he might not otherwise enjoy but for have acquired due to the research investment.[15] Presently, due to excessive competition in the market, liberalisation and

[15] Glaxo Inc. v. Novopharm Ltd., 931 F Supp 1280. 1299 (EDNC 1996).

industrialization, all the business enterprises maintain certain information sometimes in the form of data related to technological know-how, business methods, research data, ideas, methods, algorithms, list of the clients, food recipes, etc. over which they extend their exclusive possession and control. For instance, the formula for making COKE is considered to be the most guarded Trade secret in the world. The importance to maintain such information i.e., Trade secret can be highlighted by the fact that it is both a type of Intellectual property and a tactic for protecting Intellectual Property so is the result that business owners spend millions every year to protect their trade secrets. And even the employees are required to sign the non-disclosure agreement as mandate which clearly states that he will not disclose the information which he comes to know during his association with the corporation.

Several attempts have also been made by the courts to throw some light on the definition of trade secrets. In Burlington Home Shopping Ltd. v Rajnish Chhibber[16] , Delhi High Court defined Trade secret as "information of formulae, technical know-how or a peculiar mode or method of business adopted by an employer which is unknown to others[17] and which if disclosed to a competitor, would be liable to cause to real or significant harm to the owner of the secret.[18]" The courts time and again have also observed in various judgments that there is no exhaustive list as to what constitutes the trade secret but even the data such as customer's list, catalogues, designs, drawings, manufacturing process, architectural plans, business strategies, business plans falls under the category. On the other hand, the mere usage of words like crucial data, strategic information or general concepts does not constitute trade secret though it is clear by the judgments that the information should not necessarily be in writing i.e., even the oral information is protected.[19] Hence, to claim breach of trade secret, one must establish that –

i. The information is secret;
ii. It has commercial value; and
iii. All reasonable and necessary steps have been taken to protect such information.

Evidently, all these available definitions stress on a trade secret being not a common knowledge, having economic potential and is therefore, guarded. Moreover, these inclusive definitions ensure a very wide ambit of what can be classified as a trade secret.

[16] (1995) 61 DLT 6.
[17] Ambience India Ltd v Shri Naveen Jain, (2005) 122 DLT 421.
[18] Coco v A.N. Clark Ltd.., (1969) R.P.C.41.
[19] Douglas v Hello Ltd. (2005) 4 All ER 128.

Thus, it fills the void present in the other intellectual property legislations and provide an alternative means of protection to developments which falls outside the realm of patents and copyrights.

Why is there a need to protect Trade Secrets?

The stringent protection and a specific or favourable regime for intellectual property can encourage innovations and further the inventions that can have a direct effect on the development of any economy. Ideas specifically innovative and novel ones have always been the mainstay of a trade, trade secrets have proved to be having a great incentive value to develop any innovation of technology that does not fall under the ambit of non-obviousness standard of patent law, or when copyright is not available. With the advent of industrialization and globalization there is a need to provide protection to these trade secrets as secrecy of business ideas enables the traders to ensure their financial interests and enhance their brand equity.

Though the common law remedy is available to provide protection to trade secrets but they offer limited protection. In case of infringement of Trade secret, remedy can be sought under Law of Contract, Principle of Equity and Criminal Law. In India, protection of trade secret is covered under Common Law remedy as under Section 27 of the Indian Contract Act 1872 and also under the draft of National Innovation Act, trade secret and confidential information are covered as "Confidential Information" which deals with the elements of Confidentiality and also provides the remedies to protect the confidentiality. The obligations to maintain confidential information under the draft statute rest on the contractual terms and conditions, government recommendation and on any right arising in equity. It is necessary for the employees to comply with the non-disclosure agreement or non-compete clause that they are bound to fill at the time of joining the business enterprise but the non-disclosure agreement or non-compete clauses with the employees of the holder of the trade secret offers limited protection. Substantial investment of both time and resources is required to acquire trade secrets and even to maintain the secrecy therefore, there is a requirement of separate legislation to protect such efforts and to value the skill and labour of holder and this can in turn help in recovering the investment incurred in the innovation so that the enforcement costs can be recovered.

A trade secret law is required to provide protection specifically to the small or medium sector enterprises with low financial stability as they are incapable of taking reasonable protective measures to protect their secret knowledge. Even the trade secrets can pass from the holder into the public domain in the absence of any specific law protecting rights of the holder of the trade secret. It is difficult for the holder to prove that it is his trade secret as trade secrets are not registered.

We need a specific trade secret protection as it will promote confidence and security among the business concerns and that can in turn facilitate in the expansion of business and can bring in opportunities as foreign businesses can feel secure in sharing their technology with their Indian counterparts. The Indian law at that time required Coca-Cola, a foreign corporation operating in India, to transfer its technology. Coke argued unsuccessfully that its secret formula was a trade secret and not ‘technology’. The dispute ended when coke abandoned its investment in India, at an enormous cost, rather than reveal its trade secret.

Due to the absence of any specific legislation dealing with trade secret, it is still governed by common law principle of equity and the private contract between the parties. Sometimes the protection can be sought under Indian Penal Code and Information Technology Act.

“The Justification of protection of trade secret of confidential information is rooted in agreement,[20] trust[21], equity[22], confidence, property[23] and bailment;[24] that the principle of equity demands that ‘he who has received information in confidence shall not take unfair advantage of it’.”

Presently the contract has lost the monopoly in regard to protection of Trade secret rather the judiciary is inclined towards a broader equitable jurisdiction which should be based on good faith and not much on contract of property. In India, Trade secret is been given protection under common law, under the principles of breach of confidence and also the principle of equity as the maintenance of secrecy which plays such an important part in securing to the owner of an invention uninterrupted proprietorship of marketable know-how, which thus remains at least a form of property, is enforceable at law. That statement may now be examined in the light of established rules making up the law of trade secrets. These rules may, according to the circumstances in any given case, wither rest on the

[20]Vokes v Heather, (1945)62 RPC 135(CA).
[21] Coco v Clarke.
[22] Robb v Green, (1895)2 QB 315.
[23] Shree Gopal Paper Mills v SKG Malhotra, AIR 1962Cal 61.
[24] Prince Albert v Strange, (1849)2 De G. and Sm. 652.

principles of equity, that is to say the application by the court of the need for consciousness in the course of conduct, or by the common-law action for breach of confidence which is in effect a breach of contract[25]. In Gurry's treatise on 'Breach of Confidence', the jurisdiction of courts for protection of Trade Secret or confidential information has been discussed in following words:

"Equity has two distinct roles in the breach of confidence action. Thew first of these is auxiliary to the legal jurisdiction which the courts have in the contract…… Where an injunction is granted in aid of a legal right the court is still, by history, exercising an equitable jurisdiction. Thus, where an obligation of confidence is founded in contract and the court grants an injunction to restrain the confidant for misusing the confidential information in breach of that obligation, the injunction is granted upon an exercise of the equitable jurisdiction. This auxiliary jurisdiction in equity has been frequently used by the courts in cases involving a breach of confidence and, in appropriate circumstances, an injunction will be granted to enforce either an express or an implied contractual obligation of confidence. The second role of equity is to provide a jurisdiction by which the courts will restrain a breach of confidence independently of any right at law."

In our country, though we have no legislative protection for trade secrets and yet to develop the jurisprudence in this area but India being a party to TRIPS Agreement is obligated to protect such information but the kind of protection a laws or models are left to the member-states that they can have sui-generis protection which is the whole point of this article as it is also provided under Article 10bis of the Paris Convention and Article 39(2) and 39(3) of TRIPS.

Currently remedy can be sought in case of infringement under:

1. The Provisions of Criminal Law;
2. The principle of Equity;
3. The Law of Contract.

Protection of Trade Secret under Criminal Law-There are no specific provisions available in the Indian Penal Code,1860 for the protection of Trade Secret rather they are covered under Section 378 and Section 408 of the Code and even the provisions are given under Information Technology Act,2000

[25] John Richard Brady and others v Chemical Process Equipment Ltd. and another, AIR 1987 Del 372.

Protection from 'Theft' under Section 378 – Trade secret is protected under IPC against theft as 'dishonestly taking of a movable property from the possession of any person without person's consent.[26] But the problem in according the same protection to Trade secret is that it is tied with the tangible object and by virtue of Section 378, only movable property[27] can be stolen. This issue was recently addressed by Calcutta High Court in Adventz Investments and Holdings Limited and others v Birla Corporation Limited and others,[28] here the issue involved was whether stealing of documents and information can amount to theft under Section 378 of IPC and Court held that since the documents are movable by virtue of the definition given under Section 22 of the code, they can be subject matter of theft under the code.

Hence it can be concluded from the above explanation that the trade secret and the confidential information should be attached to some movable property to accord the protection under the code as without which it can not be said to be stolen.

Rather the employees can be booked under the Criminal Breach of Trust[29] if they misuse or misappropriates the trade secret or confidential information entrusted to them by the company and they can be made liable under Section 408 of the Code. This issue was raised before the court in *Pramod, Son of Laxmikant Sisankar v Garware Plastics and Polyster*[30] but Court dis not address the issue and instead court observed that-

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[26] 378. Theft – Whoever, intending to take dishonestly any movable property out of the possession of any person without that person's consent, moves that property in order to such taking, is said to commit theft……………………….
Explanation 5- The consent mentioned in the definition may be express or implied, and may be given either by the person in possession, or by person having for that purpose authority either express or implied.

[27] Section 22 of IPC defines Movable Property as under:
Section 22 – 'Movable Property'- The words 'movable property' are intended to include corporeal property of every description, except land and things attached to the earth or permanently fastened to anything which is attached to the earth.

[28] (2015) Cri LJ 3369.

[29] Section 405. *Criminal Breach of Trust*- Whoever, being in any manner entrusted with property, or with any dominion over property, dishonestly misappropriates or converts to his own use that property, or dishonestly uses or disposes of that property in violation of any direction or law prescribing the mode in which such trust is to be discharged, or of any legal contract, express or of any legal contract, express or implied, which he has made touching the discharge of such trust, or wilfully suffers any other person to do so, commits 'criminal breach of trust'.
Section 408. *Criminal Breach of Trust by clerk or servant* – Whoever, being a clerk or servant or employed as a clerk or servant, and being in any manner entrusted in such capacity with property, or with any dominion over property, commits criminal breach of trust in respect of that property, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

[30] (1986)3 Bom CR 411.

"it is well settled that criminal prosecution is a serious matter and would amount to harassment of the accused and also to the abuse of the process of the court if without sufficient grounds it is allowed to proceed."

However, Court in this case went on to observe that the remedy should not be used to fulfil the personal vendetta but it is still not clear whether can action be brought under Section 405 of the code for the protection of Trade Secret or not.

Protection under Information Technology Act, 2000- The legislation provides for both civil and criminal remedy against the information theft through electronic route and also against its misuse and with the increasing age of digitalisation, the parliament has amended the act in 2008. The act provides for stringent mechanism to punish the offenders for the theft of confidential information such as unauthorized use od data/information obtained from computer systems, tampering of source code or even for removal of storage medium. It has provisions for payment of compensation and also provides for imprisonment for a period of up to three years or fine of up to Rs. Five lakhs. Further, the act prescribes penal provisions for disclosure of confidential information without the consent or authority of the owner.[31]

Remedies for Infringement of Trade Secret

A right to sue for breach of confidence lies with the owner of the confidential information against the persons to whom such information is entrusted upon and even the owner can claim for equitable remedy of Injunction and Damages.

Injunction

This is the most common remedy for infringement of Trade Secret in India. The Code of Civil Procedure,1908 gives the civil court to grant temporary injunction whereby defendant is prevented from disclosing the Trade Secret. Injunction being a discretionary remedy, it cannot be claimed as a matter of right and plaintiff has to establish prima facie case, irreparable injury and balance of convenience in his favour. While delivering Judgments the court also observed that if an employment contract is not hit by section 27 of the Indian Contract Act,1872 and is valid, the court has the power to prevent the breach of such contract to protect the legitimate interest of the employer.

Damages

[31] Section 72. Penalty for breach of confidentiality and privacy- Save as otherwise provided in this Act or any other law for the time being in force, if any person.

If there is an infringement of Trade Secret or confidential information, then the damages can be given to the holder to put him in the position that he would have been in had there been no breach of confidence and sometimes damages can be granted instead of injunction.

Indian Courts have given considerable recognition to the common law principles such as obligation to protect Trade Secrets and the courts while dealing with the cases at hand have time and again referred that the trade secret shall be protected under common law in the absence of any specific legislation. In AIA Engineering Pvt Ltd. v Bharat Dand and ors., the Gujarat High Court held that 'under the common law, a servant can be prevented from diverting the trade secret'. And similarly, the Delhi High Court in the case[32] involving unauthorized use of trade secrets observed, 'it will also be in the interest of justice to restrain the defendants from abusing the know-how, specifications, drawings and other technical information regarding the plaintiff's fodder production unit entrusted to them under express conditions of strict confidentiality, which they have apparently used as a 'spring-board' to jump into the business field to the detriment of the plaintiffs from using in any other manner whatsoever the know-how, specifications, drawings, and other technical information about the fodder production and disclosed to them by the plaintiff.'

Hence, in India there have been several cases in courts and tribunals related to trade secrets and confidential information and know-how, where courts were either being confronted with the issues of copyright or contract law and sometimes also under the action of misappropriation under common law. But there is a need of a specific legislation dealing with trade secret protection and that can provide sui generis protection.

Conclusion

Law relating to the protection of Trade Secret is still at a nascent stage in India since we do not have any specific legislation dealing with the subject. We are the at age of industrialisation and globalisation where the IP portfolio of a business matters so much to compete in the economic market. And the Intellectual Properties like Trade Secrets form the core of the business activities because it comprises of the secrets and know-how which makes the business survive successfully. Such an important matter can not be left at the mercy of common law and contract law remedies. Moreover, India is a signatory member of the multiple International Convention dealing with Trade Secret[33] and it is our Constitutional

[32] Richard Brady and Ors v Chemical Process Equipment P Ltd and Another.

[33] Paris Convention for the Protection of Industrial Property, 1883 and Agreement on Trade Related Aspect of Intellectual Property, 1994.

obligation under Article 253 to bring the legal regime related to the protection of Trade Secret in accordance with the International Obligation which prescribes for minimum standards for the protection of the Intellectual Properties. Though recently to comply with the Constitutional obligation, a bill named 'Draft Innovation Act,2008' has been drafted but it has not been enacted and even the draft bill does not provide for adequate protection against the misuse or tampering of Trade Secrets, it has various lacunas.

Thus, India needs to bring a comprehensive Act in tune with the best-established International practice for protection of Trade Secret. Therefore, it is suggested that the loopholes existing in the present draft bill should be rectified. And also as suggested by the Law Commission in its 13th report that the section 27 of the contract shall stand amended to allow the contracts reasonably restraining the right of any party to carry on trade if such contracts are designed to advance protection to Trade Secret and are not against the public policy of India.

THE EXISTING LAWS ARE SUFFICIENT TO ADDRESS THE PROBLEM OF WHITE-COLLAR CRIME IN CORPORATE SECTOR OR THEY REQUIRE REFORMATIVE MEASURE

BY-ALPIKA SRIVASTAVA[1]

PIYUSH JAIN[2]

ABSTRACT

This paper offers an in depth know-how in the back of the reasons of humans committing crimes. Researchers have named the Title of paper "**THE EXISTING LAWS ARE SUFFICIENT TO ADDRESS THE PROBLEM OF WHITE-COLLAR CRIME IN CORPORATE SECTOR OR THEY REQUIRE REFORMATIVE MEASURE"**. Where the crimes had been minimum and restrained to a selected region of management its miles termed as Grass Eaters. The People worried in white collar crimes and which has un-fold in nearly all fields of enterprise are termed as Meat Eaters. With the appearance of generation and increase of education, white collar crimes are at the rise, being included with the aid of using experts locating loopholes within side the judiciary and help from the authorities indirectly. This has created a nexus wherein humans from nearly all walks of existence have commenced forming organization to do white collar crimes and being included with the aid of using experts in law. This has caused a scenario wherein the small timers have end up white collar criminals. Talking approximately the superiority of white collar crimes in India, they're spreading like a speedy hearth place in each sphere of society. Though corruption, one of the species of white collar crimes, has been the maximum mentioned trouble in all spheres-social, monetary and political, now no longer an awful lot stringent steps moves had been taken to cut back this menace. Therefore, the priority of this paper is to outline white collar crime, look at its historic improvement and formulate tentative answers for removing the problem.

KEY WORDS:*Conceptualize, Embezzlement, White collar crimes, Corporate sector , Reformative*

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1.1 INTRODUCTION

"*White-collar crime are those crimes which are committed by a person of respectability and high social status in the course of his occupation"*

-by Edwin Sutherland

More than seven decades ago, Edwin Sutherland coined the term "white-collar crime" to draw attention to the fact that individuals from any socioeconomic background are capable of engaging in illegal behavior. Sutherland did this to emphasize the reality that criminal activity can be committed by individuals from any socioeconomic background. The majority of people have trouble grasping the concept of white-collar crimes, and over the past few years, the very classification of these types of offences has become increasingly contentious. In the course of the development of the discipline, these crimes were presented as a subject of inquiry; yet, the introduction of the notion did not occur in a void. White-collar crime can be traced back to the original definition of the term and its subsequent changes, which demonstrates the need to conceptualize distinct types of white-collar wrongdoing. The origins of white-collar crime can be found in the original definition of the term and its subsequent changes.

In the beginning, no social scientist, not even Edwin Sutherland, paid attention to the crimes that were committed by the wealthy. In connection to the "criminal-old notion" that was initially coined by E. A. Ross in Sin and Society, Sutherland came up with the term "white-collar criminal old" and included it in his criminology textbook published in 1934. Ross continued by asserting that the criminal old is "society's most deadly opponent, more redoubtable than the basic criminal, for he sports the livery of virtue and operates on a massive scale." On the basis of these concepts, Sutherland brought attention to the fact that people from all different walks of life have been responsible for committing crimes. The phrase "crime committed by a person of respectability and high social position while working" best describes this scenario.

Today, the term "crime" refers to a wide variety of unlawful and illegitimate behaviors that can be carried out by either individuals or businesses. Smuggling, hoarding, black-market trading, trafficking in licenses and permits, adulteration of food and drug products, abuse by public officials of their positions of trust, and violations of excise, customs, and foreign-exchange regulations, amongst other regulations, are all examples of crimes that fall under this category. Up until recently, the primary focus of criminology has been on more traditional crimes such as homicide, robbery, theft, embezzlement, and other offences committed against people and their property. There has been a decline in the amount of coverage given to economic and white-collar crime. In most cases, a "person of high socioeconomic standing who breaks the laws intended to control his occupational activity" will be referred to as a "white-collar criminal."

These criminals include, but are not limited to: brokers who market fraudulent securities; builders who purposefully use substandard materials; executives of businesses who conspire to set prices; legislators who abuse their authority for private gain; bankers who misappropriate funds in their custody; and executives of businesses who conspire to set prices. As a result, a white-collar criminal is a legitimate felon, despite the fact that he is rarely brought to court and does not lose his social standing even for large-scale tax evasions, irregularities in trade and commerce, or malpractices within government agencies. This is because white-collar criminals are more likely to commit their crimes behind a computer screen than in the open.

When it comes to so-called "white-collar crime," "the purpose is avarice, not hatred," and this distinction between it and other sorts of criminal activity is what sets it apart. It is not uncommon for the state or a sizable portion of the population, such as the general public, to be the one that suffers the consequences. Even in situations where an individual suffers direct harm, the greater problem at hand is the damage done to the community as a whole. Instead of using force, they resort to deception as their primary mode of operation.

Researchers are interested in white-collar crimes in India, specifically with reference to Indian law, because these crimes show differing perspectives on various types of criminal activity. White-collar crime, in comparison to other types of criminal activity, is often considered to be a more realistic representation of society. Members of subgroups that have substandard values are more prone to engage in criminal behavior or exploit the members of other groups. This does not imply that the businessman would break into someone's home and steal from them, but it does mean that he would disobey the law since his own group tolerates or even approves of it, and the larger society does not severely condemn it. The burglar would not be in breach of the Income Tax Act because there were no opportunities for him to commit the crime.

1.2 DEFINITION

"*White collar crime may be defined approximately as a crime committed by a person of respectability and high social status in the course of his occupation."*[3]

"The white-collar criminal is defined as a person with high socio-economic status who violates the laws designed to regulate his occupational activities."[4]

an illegal act or series of illegal acts committed by non-physical means and by concealmentor guile to obtain money or property to avoid the payment or loss of money or property or toobtain business or personal advantage."[5]

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[3] Ellen S. Podgor, "Corporate and White Collar Crime: Simplifying the Ambiguous", American Criminal Law Review, Vol.31, 1993, pp. 391-402, at p. 391.

[4] Gilbert Geis, "White-collar Crime What is it?", Current Issues in Criminal Justice, Vol.3, 1991, pp. 9-24, at p. 13.

[5] Stuart P. Green, "The Concept of White Collar Crime in Law and Legal Theory", Buffalo Criminal Law Review, Vol.8, No. 1, 2005, pp. 1-34, at p. 4.

1.3 HISTIRICAL GROWTH AND DEVELOPMENT OF WHITE COLLOR CRIMES IN INDIA

The first occurrence of a statute pertaining to white-collar crime that has been found in written history dates back to England in the 15th century. In the year 1473, there was a case that later became famously known as the "Carrier's case." In this particular instance, an agent was tasked with the transportation of wool, and that agent afterwards attempted to steal some of the wool for himself. As a consequence of this, the Star Chamber and the Exchequer Chamber of the English Court of Law formulated the "breaking bulk idea" due to the fact that it was an element of the offence of larceny. On the other hand, the development of industrial capitalism throughout the eighteenth century ushered in a new era of criminal activity and deviant behavior, which is documented in the annals of criminality.

At the same time, other industrialized nations, such as Great Britain, also had a history of punishments related white-collar crime; however, these punishments were not quite as thorough as the Sherman Act. Although some nations have enacted a few of these laws, which are also known as competition or antitrust legislation, for a substantial amount of time, they did not have a large binding effect. Nevertheless, some of these laws have been enacted in those countries. In the United States in the latter half of the 19th century and the early part of the 20th century, there was a group of journalists known as muckrakers. Because of the job that they did, attitudes toward fighting white-collar crime became more prevalent throughout this time period. They directed a significant amount of attention toward the widespread cases of stock fraud, insurance fraud, and underhanded commercial techniques that were carried out by monopolistic firms that had taken advantage of the Sherman Act. [6]

As a result of the public outrage sparked by the muckraker's exposés, institutional change became necessary. The Sherman Act, which had been used against labour unions, was further strengthened and enhanced in 1914 when Congress established the Clayton Antitrust Act. In 1890, the Sherman Act was passed. This Act was far stricter and went much further than the Sherman Act when it came to enforcing specific monopolistic conduct.[7]

1.4 WHITE COLLAR CRIMES IN INDIA

Nameless, faceless white-collar criminals ruled 2011 while street crime, notably snatching and vehicle theft, was significantly reduced from 2010. There were 148 persons jailed for white-collar crimes in 2011, up from only 71 people in 2010 who were charged with comparable offences. The number of white-collar criminals caught by the crime branch has increased by 108 percent. ― According to a senior police officer, twenty organized white-collar rackets were broken up last year, and as a result, R4.5 million in cash and valuables, three dozen cars, and hundreds of mobile

[6] Edwin H. Sutherland, White Collar Crime,1949, p 1-12

[7] Gilbert Geis and Robert F Meier, White Collar Crime, Offences in Business, The Free Press, Collier Macmillan Publisher, London,1997, p 83

phones were confiscated. Lotteries, phoney recruitment rackets, ATM fraudsters, travel agencies, property sellers, agents promising fraudulent court documents and death certificates, and fake friendship clubs run by men and women are all on this list of people who have committed fraud. The Economic Offences Wing (EoW) of the Delhi Police, on the other hand, has made 163 arrests in 1,358 instances, which include everything from land grabbing to fraudulent job rackets and attached property worth anywhere between 350 and 500 crores rupees. Land grabs, false job rackets, and attached property were all included in the instances.

It was determined this year that we would focus more on individual cases rather than multi-victim investigations. VivekGogia, a joint CP, remarked that we added new employees (EoW). White-collar crime is a global issue, and India is no different. This must be acknowledged. Previously, it was stated that the entrance of British colonization in India during the period of industrial capitalism prepared the way for the rise of white-collar crimes in India. As a result, the District treasury staff and government officials were accused of stealing money that was supposed to be in their care for safekeeping and utilizing it for personal advantage. Consequently, the scope of white-collar offences was limited to this degree. Today's population has evolved to the point where they consume meat, reducing those who commit white-collar crimes to the status of "grass eaters."

1.5 INVESTIGATION AND PROSECUTION OF OFFENCES COMMITTED UNDER INDIAN PENAL CODE, 1860

India's principal investigative agency is the Police. Indian criminal justice is built on the Code of Criminal Procedure, 1973, which specifies that police are the primary investigators. Every infraction is subject to investigation in accordance with the Code.[8]

The Code defines the steps that must be taken in order to carry out a criminal investigation. On the other hand, if there are certain statutes that are pertinent to the process, then those statutes will take precedence over the requirements that are specified in the Code. As a result of the fact that state governments in India have the major duty for law enforcement, state legislatures are the bodies that have authority over all issues pertaining to the police. The structure of the police force is determined at the state level, as opposed to being a federal institution. There are numerous police departments in India, each of which has a name that is distinctive to the state in which it is located. Some examples of these state-specific titles include Rajasthan, Assam, and Bihar. Each state has its own set of laws governing law enforcement. The rules and regulations of that state are used to organize and direct the activities of that state's police forces, as required under the provisions of the applicable Police Act. These standards and guidelines are outlined in detail inside the police manuals used by the state police.

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[8] According to Section 2 (n) of the Code of Criminal Procedure, 1973 offence means any act made punishable by law for the time being in force.

1.6 CENTRAL VIGILANCE COMMISSION

The Central Vigilance Commission[9]was established in 1964 by the government of India in response to a suggestion made by the Committee on Prevention of Corruption, which is also commonly referred to as the Santhanam Committee.The Commission was accorded statutory status consequent to the Supreme Court judgment in the case of VineetNarain v. Union of India[10]because of the passage of the Central Vigilance Commission Act, 2003. The Commission's chairman is a Central Vigilance Commissioner, and two other Vigilance Commissioners serve as his or her deputies. 390 The commission's major duty is to conduct or oversee the conduct of investigations against particular categories of public employees. To the best of our knowledge, the Commission lacks the authority to carry out any form of investigation. When investigations are being carried out in compliance with the Anti-Corruption Act of 1988, the Central Bureau of Investigation (CBI) is under close scrutiny as a result. In addition, the CVC is tasked with managing the administration of vigilance in various government departments and agencies. As the "Designated Agency" for receiving written complaints for disclosure about any allegations of misuse of office or corruption, the Indian government has delegated authority to the Central Vigilance Commission (CVC). Whenever a complaint is received by the commission, it conducts an investigation to establish whether or not the claims in the complaint are true. The complaint will be dropped if the allegations are judged to be untrue, and no further action will be taken. Complaints can be investigated either independently or through a request to the relevant administrative ministry or agency, or even through a request to the Central Bureau of Investigations (CBI).

1.7 CENTRAL BUREAU OF INVESTIGATION

The CBI investigates the corruption cases of the employees of central government and Union Territories.[11]The CBI can be referred to in cases when the state anti-corruption bureau is conducting an inquiry. CBI's constitutionality and investigative powers were recently challenged in Guwahati High Court.[12]Attempting to demonstrate that the CBI is a no statutory institution since it was established by executive order is to argue that it lacks the powers of inquiry, such as search and seizure. It has been decided that the CBI does not have statutory status by an appeals court. As a result of this decision, CBI was dubbed "unconstitutional".[13]However, the CBI contested the

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[9] The Commission was set up through a Government Resolution No. 24/7/64-AVD issued by the Ministry of Home Affairs dated 11 February 1964.

[10] 1997 (7) SCALE 656. 390

[11] Section 11 of the Central Vigilance Commission Act, 2003

[12]Navendra Kumar vs. UOI and Ors., 2013 Cri LJ 5009.

[13] Press Trust of India, "Guwhati HC Declares CBI Unconstitutional", The Times of India, 7 November 2013, p.2.

High Court's decision before the Supreme Court, which has temporarily halted the High Court's verdict.[14]

1.8 STATE ANTI-CORRUPTION BUREAU

The state anti-corruption agency is investigating allegations of wrongdoing against state employees. Structure and career opportunities within these organizations are highly variable. There will be a formal inquiry or investigation, according to the complaint, once the information in the complaint has been verified. To the full extent permitted by the Code of Criminal Procedure, 1973, the vigilance bureau's officers can conduct investigations in accordance with all the rights afforded to an investigating officer.

1.9 LOKPAL

The Lokpal and Lokayuktas Act of 2013 established a new authority known as Lokpal with the responsibility of investigating allegations of corruption. The office has not yet come into existence. The Lokpal is going to be constituted with a chairperson and no more than eight members totaling the total membership. The members of the judiciary will make up half of the total members. The primary responsibility of the Lokpal will be to investigate complaints of improper government behaviour. The authority of the Lokpal extends to everyone who works for a government-funded or controlled company, including members of parliament and legislative assemblies, as well as personnel in private companies that get government funding. If the state government gives its consent, the Lokpal will only be able to exercise its jurisdiction over the personnel of the state government. The Lokpal will also have authority over institutions that receive foreign donations in excess of ten lakh rupees per year or such a bigger maximum as may be set. This maximum amount could be increased. The following is stated in Section 14 of the Lokpal and Lokayuktas Act of 2013:

Sanctions are required at this time. The start of the prosecution is delayed as a result of delays in the granting of the sanction, which causes the procedures to drag on for longer. The public's faith is harmed, as is the morale of the public authorities who are responsible for causing these delays. There have been instances in which the charges brought against a public figure have been dropped due to a delay in the awarding of punishment.

In ***the case of Mahendra Lal Das v. State of Bihar and Ors.***,[15]the Supreme Court quashed the prosecution as the sanctioning authority granted sanction after 13 years.[16] Similarly, ***in the case of***

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[14] Press Trust of India, "SC Stays HC's Order that declared CBI 'Unconstitutional'", The Economic Times, 9 November 2013, p.1.

[15] Central Vigilance Commission Manual, 2005, p. 109. Also see circular No. 006/DSP/002 issued by Central Vigilance Commission dated 23 June 2006

[16] 416 (2002) 1 SCC 149. 417 (1994) Supp.3 SCC 735.

Santosh De v. ArchnaGuha and Ors.,[17]the Court quashed prosecution in a case where grant of sanction was unduly delayed. There are several such cases. The aforesaid instances show a blatant subversion of the rule of law and raises serious questions which need to be addressed. The Supreme Court through various judgments has laid the law on the point.[18] In the case of ***VineetNarain v. Union of India*** the Supreme Court in para 58 (I)(15) of the judgment has categorically laid down that time limit for granting sanction for prosecution is three months and his time limit must be strictly adhered to. However, additional time of one month may be allowed where consultation is required with the Attorney General or any other law officer in the Attorney General's office.[19] The CVC which has been empowered to review the progress of applications pending with the competent authorities for grant of sanction under the Prevention of Corruption Act, 1988[20] has since than emphasising the need of expeditious disposals of requests for sanction for prosecution. In 2005 the commission issued detailed guidelines for guidance of authorities and also warranted strict adherence.[21] It laid that grant of sanction is an administrative act and the purpose it not to shield the corrupt. The question of giving opportunity to public servant at this stage does not arise and the sanctioning authority has only to see whether the facts would prima facie constitute the offence. However, even after this framework the sanctioning authorities do not adhere to the time limit. In the year 2011 the CBI reported there were 71 cases pending with various organizations for grant of sanction for more than three months.[22] In 2012 this number rose to 85.[23]

In the recent case of ***SubhramaniumSwamy v. Manmohan Singh and another***[24], After 16 months, the Prime Minister's Office still hadn't responded to a plea for permission to prosecute former Telecom Minister A Raja in the 2G spectrum scandal, raising the question of a time limit.

In spite of the passage of two years since the date of formulation of the accusations, a number of those charged in corruption cases were acquitted in 2002 after being brought before the Supreme Court on the premise of failing to initiate trial. Following the recommendation of a seven-member bench, the Supreme Court referred the case.

- R. Antulay's dictum was right on the money.
- Raj Deo Sharma v. State of Bihar, (1996) 4 SCC 33; Raj Deo Sharma (II) v. State of Bihar, (1999) 7 SCC 604 are not good legal decisions.

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[17] Circular No. 006/DSP/002 issued by Central Vigilance Commission dated 23 June 2006.
[18]Jagjit Singh v. State of Punjab, 1996 Cri LJ 2962; Superintendent of Police (CBI) v. Deepak Chowdhary, AIR 1996 SC 186; State of Bihar v. P.P. Sharma, AIR 1991 SC 1260. 419 (1998) 1 SCC 226. This case is popularly known as "Hawala Case".
[19] Office Memo No.142/10/97 AVD I issued by Department of Personnel and Training on Sanction for Prosecution dated 14 January 1998.
[20] Section 8 (f) of the Prevention of Corruption Act, 1988.
[21] Circular No.005/ VGL/11 issued by Central Vigilance Commission dated 12 May 2005.
[22] The Central Vigilance Commission, 'Annual Report (2011)', p. 64.
[23] The Central Vigilance Commission, 'Annual Report (2012)', p. 78.
[24] Popularly known as 2 G Scam. AIR 2012 SC 1185. 426 (1998) 1 SCC 226.

- The examples provided here are for educational purposes only and are not intended to be all-inclusive.
- Setting a time restriction for the completion of all criminal cases is neither practicable nor advisable.
- In order to ensure that a trial does not become unnecessary and oppressive, the courts in which the trial is proceeding can use the time periods imposed in the judgements as a reminder.
- The best defender of the right to a swift trial is the trial judge. Sections 258, 309, and 311 of the Code of Criminal Procedure, 1973 should be utilised to their fullest extent. 440 444 Code of Criminal Procedure (1973), Section 258 grants the Magistrate the authority to halt proceedings in certain circumstances.
- Section 309 gives the courts the authority to postpone or adjourn hearings. As stated in Section 311, courts are able to summon witnesses and question those who are in the courtroom.

1.10 CONCLUSION

This paragraph's material leads to the reasonable conclusion that an investigation into white-collar crimes is a difficult undertaking. White collar crime has skyrocketed in this country because of the criminal justice system's inability to adequately address the issue. As a society, we all benefit greatly from the fact that these rules are in written form. An effective enforcement mechanism is essential for tackling white-collar crime successfully. The methods a society employs to enforce its criminal laws can give a good indication of the level of civilization inside that country. Investigations and punishments for white-collar crimes in India are handled by a large number of different entities.

The Indian Penal Code, passed in 1860, gives specific definitions to white-collar offences. It is the Indian Police or the Central Bureau of Investigation (CBI) that investigates and prosecutes these offences. The Indian police force is recognized as the primary investigating agency by the Indian Code of Criminal Procedure, which was created in 1973 and forms the foundation of the country's criminal justice system. As soon as the country's criminal justice system was put in place, this designation was made official. It gives the police the authority to investigate any offence that falls within its parameters. The police are the state's go-to investigators for crimes against the public trust and safety. White-collar crime investigations are often handled by the "white-collar crimes unit" of the local police force. An agency that investigates and prosecutes several white-collar offences is the Central Bureau of Investigation (CBI). There are a number of divisions within it.

Even if the CBI receives more powers, the states' authority to provide those powers to the CBI remains unaffected. Despite this, the formal education system is administered by the University Grants Commission, which was created in 1956 to avoid the requirement of 576 institutions. 576 was omitted as a result of this action. The Indira Gandhi National Open University Act, which was passed in 1985, established the Distance Education Council, which governs both open and distance education. Regulating open education falls to the council's purview. In 1987, the All India Council for Technical Education was founded in accordance with the All India Council for Technical Education Act, which grants it the jurisdiction to govern the country's technical education system. As a result of this, the Bar Council of India, established under the Advocates Act of 1961, is in charge of ensuring that legal education is properly regulated; the Medical Council of India, established under the Indian Medical Council Act of 1956, is in charge of ensuring that medical education is properly regulated; the Dental Council of India, established under the Dentists Act of 1948, is in charge of ensuring that dental education is properly regulated.

Aside from describing the organizational structure and the authorities held by these institutions, this discussion has also covered the investigative process in great detail. Other specialized agencies are responsible for the regulation, investigation, and punishment of white-collar crimes in certain industries in addition to these important ones. Both the statute and the executive order issued by the ministry responsible for that role are responsible for the foundation of these institutions. The battle against white collar crime as a whole is complicated by the fact that separate agencies are only responsible for a single category of white collar crime. Consequently, their involvement in the battle is limited.

Examples include the Central Vigilance Commission (CVC), the State Anti-Corruption Bureau (also known as Lokpal), the Department of Income Tax (DITC), the Department of Central Excise and Customs, the Serious Fraud Investigation Office (Directorate Enforcement), and different Pollution Control Boards. There are certain industries that are more susceptible to fraud than others. Banks, telecoms and insurance are just a few examples of these industries.

A direct result has been the establishment of governing authorities such as India's Securities and Exchange Board (SEBI), Reserve Bank of India, the Insurance Regulatory and Development Authority, the Telecom Regulatory Authority of India, and other similar organizations. The sovereign function of the state is to ensure that lawbreakers and other criminals are brought to justice in our modern society. As long as there is a system of government, no one other than the state can be in charge of bringing offenders to justice. This is a vital part of the government's role. Since the Code of Criminal Procedure was enacted in 1973, the prosecution is carried out in accordance with prescribed procedures. All the public prosecutors who have been nominated by both the federal and state governments to prosecute the case are part of this agency.

Investigation and prosecution are the responsibility of the Central Bureau of Investigation (CBI), which has a Directorate of Prosecution. It's possible that the investigation and prosecution will be handled by specialized authorities, and that prosecutors will either be appointed by the agency or appointed by the federal government.

Specialized agencies may be called in to help with the investigation in specific instances. Specialized law enforcement agencies may be called in to investigate in each of these cases.

Immediately following a court hearing in which a defendant is found guilty of a crime, the most important issue is how severe of a sentence the criminal should receive.

This is the most significant step in the criminal justice system of the society since it shows the public's disapproval of that type of illegal activity. The [cause and effect] of the situation in the next chapter, we'll dig deeper into the concept of sentencing and go through various topics and pieces of law surrounding it. In addition, the sentencing guidelines for white collar crime in various countries are examined in this chapter, as are the laws pertaining to the forfeiture of white collar criminals' property, which is an effective weapon in the fight against money laundering.

Forensic Medicine

-*Prakhar Vashisth*[1]

Abstract

Forensic medicine, often known as legal medicine or medical jurisprudence, is one of the broadest and most significant branches of forensic research. It integrates medical expertise with criminal and civil law. In forensic medicine, anatomy, pathology, and psychiatry are 3 disciplines of medicine which are often employed. The practice of updating medical research to legal challenges is known as medical jurisprudence, or forensic medicine. It is frequently used in cases when there are blood links, mental illness, injuries, or death as a result of violence. When wrongdoing is suspected, an autopsy is often undertaken to find out what happened. A post-mortem examination may disclose not just the cause of death, but also important contextual information like amount of time the person has been dead, which can help with murder probe. Treatment takes precedence in medico-legal situations. Following that, the procedural criminal legislation will take effect in order to prevent negligent death. A doctor is legally obligated to report crimes such as murder, dacoity, waging war against the legitimate government, and assisting in the escape of inmates to the closest judge or police officer. If a doctor has grounds to think that a patient, he is treating has committed an offense and fails to report it to the authorities, he will be penalized. However, he is not required to disclose if he treats a person who has tried suicide.

Keywords: Forensic, science, medicine, medical, professional, evidence, punishment.

Introduction

Forensic medicine is the science that teaches the application of all fields of medical knowledge to legal purposes. Autopsies are generally conducted in order to identify deceased, but they may also be used to ascertain the cause of death. Medical jurisprudence is a science and medicine specialization that investigates and combines scientific and medical competence to legal concerns such as inquests and legal practice. The practice of applying medical science to legal difficulties is known as medical jurisprudence, or forensic medicine. It is usually utilized in circumstances where there are blood ties, mental illness, injuries, or death as a consequence of violence.

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In tragedies like landslides and airline crashes, forensic medicine is vital in identifying deceased. The determination of major mental illness by a professional psychologist may be used to demonstrate incompetency to stand trial.

History

Written documents reaching back 4000-3000 B.C. in Egypt, Sumer, Babylon, India, and China mention law-medicine issues. Kautilya's Arthashastra established punitive laws and controlled medical practice. The Hammurabi Code is the earliest known medical and legal code. Incest, adultery, kidnapping, murdering an embryo, murder, intoxication, and other crimes are mentioned in the Rig Veda and later Vedas, as well as their penalties. The Atharva Veda has detailed information on cures for a variety of ailments. Paulus Zacchias is known as the Father of Forensic Psychiatry and the Father of Legal Medicine. Physicians should have unique expertise in the realm of disordered mental states, he said. At the end of the 16th century, autopsies in medico-legal matters became more common. In the case of McNaughten, the law relating the criminal culpability of crazy people was created in England in 1843. Sir Henry M'Naghten was convicted of assassinating Peel's secretary Edward Drummond, who died five days later. The House of Lords posed a number of theoretical questions regarding the defense of insanity to a panel of justices. The McNaughton Rules are ideas espoused by this panel. They've been a conventional criterion for criminal culpability in common law countries in respect to mentally ill individuals ever since.[2]

Types of Injuries and Wounds

An injury is defined as “the break in the normal continuity of any of the live body's tissues.” “Injury is defined as any damage inflicted unlawfully to a person's body, mind, reputation, or property”, according to Sec 44 of IPC. Injuries may be classified in a variety of ways. Mechanical and thermal injuries are the two types of injuries classified under the etiological categorization. “Abrasions, contusions, lacerations, stab injuries, incised wounds, and gunshot injuries” are the different types of mechanical injuries. “Burns and scalds, frostbite, chemical burns, radial burns, and electric burns” are all types of thermal injuries. The three criteria for medico-legal categorization are severity, method of death, and time of death. Suicidal, homicidal, and accidental injuries are classified as simple and severe injuries,

[2] Christopher Slobogin, “An End to Insanity: Recasting the Role of Mental Disability in Criminal Cases”, 86 VLR 1199-1247 (2000).

respectively, as are injuries based on "manner of death: suicidal, homicidal, and accidental injuries, and injuries based on time of death: ante-mortem and postmortem." The medico-legal opinion on injuries should include a complete description of the injury as well as an opinion on its legal status. These views aid the court in determining the gravity of the offense as well as the severity of the suspect's sentencing.

Relevant Laws

The importance of forensic science in criminal investigations and trials must be balanced against legal constraints. The main issues are as follows: a) what is the constitutional legitimacy of such techniques? b) To what degree does the law permit forensic procedures to be used in criminal investigations? No individual accused of a crime may be forced to testify against himself, according to Art 20(3)[3]. The assumption that an accused person is innocent unless proven guilty is based on Article 20(3). It also shields the accused from probable mistreatment while in police custody for an inquiry. In criminal law, an accused is presumed innocent unless his guilt is proven beyond a reasonable doubt. "Everyone accused with a criminal crime has the right to be assumed innocent unless proven guilty according to law in a public trial in which he has received all the protections required for his defense," declares Article 11 of UDHR. The right against self-incrimination is guaranteed u/Art 20(3), as does the right against compelled testimony of any witness. This provision was established to guarantee that a person is not obligated to answer any inquiry or provide any document or object if the content has the potential to lead to a criminal conviction. c) What is the forensic information acquired from the experts' evidential value? The court has the authority under Section 73 of Indian Evidence Act to order anybody, including an accused, to enable his finger prints to be taken. In Ramchandra Reddy v. State of Maharashtra[4], the Bombay HC supported the legitimacy of "P300 or brain finger-printing, lie detector test, and narco analysis." The court affirmed a special court order authorizing the SIT to undertake scientific testing on the suspects in the phony stamp paper scheme, including Abdul Karim Telgi, the primary suspect. The ruling also stated that evidence obtained while under the influence of truth serum is acceptable. In 2005, the CrPC was modified to allow for collecting of a variety of medical information from suspects upon arrest. According to Section 53 of the Criminal Procedure Code of 1976, "an accused individual may be subjected to a medical examination after being arrested if there are reasonable grounds for thinking that the examination would

[3] The Constitution of India, 1950.
[4] Crl. WP No. 1924 of 2003.

yield evidence of the crime.” In 2005, the scope of this examination was broadened to include "the examination of blood, blood stains, semen, swabs in cases of sexual offenses, sputum and sweat, hair samples, and finger nail clippings using modern and scientific techniques, including DNA profiling and such other tests as the registered medical practitioner considers necessary in a particular case." The medical examination of a woman who is an alleged victim of rape within twenty-four hours is required by Sec 164A of CrPC, 1973, and this examination includes DNA profiling of the lady. Both provisions allow any medical practitioner to take a DNA sample under Section 2(h) of Indian Medical Council Act, 1956. The question is whether every doctor is capable of collecting and preserving DNA evidence. It is common knowledge that DNA evidence is totally reliant on appropriate sample collection and storage. Any simple oversight or misunderstanding might taint the sample, rendering it useless. A forensic report is deemed "opinion" by an expert under the Indian Evidence Act of 1872. An expert may be described as a person who has gained expertise in any science or skill through practice and observation. He is someone who has given time and research to a certain area of study, and is therefore particularly knowledgeable in the subject in which he is asked to provide his judgment. The credibility of an expert witness is determined by the reasoning given in support of the result, as well as the tool method and materials used to get that conclusion. The court, on the other hand, is permitted to disagree with the expert's findings and base its judgment on other evidence.

Importance of Medical Professionals in Criminal Law

Medical experts have always been put on a pedestal above ordinary mortals in the eyes of the law. A few verbal instances may be found in the Indian Penal Code of 1860. Acts not meant to cause death, done by agreement in good faith for the benefit of another person, are exempted under Section 88 of the General Exceptions Chapter. Actions done in good faith for the benefit of a person without his agreement are exempted under Section 92, even if the acts cause injury to that person who has not agreed to be harmed. If the communications are made in good faith, Section 93 protects them from criminal culpability. The logic for these prohibitions is that no one can behave himself in such a way that he can be totally assured that he will not cause the death of another species. Understanding the relevance between the two will be aided by a review of a few situations. A fully competent medical practitioner administered his patient the injection of Sobita, which included sodium bismuth tartrate as prescribed by the British Pharmacopoeia, in John Oni Akerele v. The King[5]. It was, however,

[5] A.I.R. 1943 P.C. 72.

an overdose of Sobita that was given. The patient passed away. The doctor was charged with manslaughter and carelessness. He was found guilty. The decision was made in an appeal to the House of Lords. Their Lordships stated that "doctor is not criminally responsible for a patient's death unless his negligence or incompetence went beyond a mere matter of compensation between subjects and showed such disregard for life and safety of others as to amount to a crime against the State; the degree of negligence required is that it should be gross and that neither a jury nor a court can transform negligence of a lesser degree into gross negligence merely by giving it that appellation. There is a difference in kind between the negligence which gives a right to compensation and the negligence which is a crime." The judgement in Dr.Suresh Gupta v. Govt. of NCT of Delhi[6] has virtually unmistakably established that if a patient dies as a consequence of a doctor's negligent medical care, the doctor may be held accountable under civil law for compensating the patient and paying tort damages. He may even be found criminally accountable if his carelessness was so severe and his behaviour was so reckless that it put the patient's life in jeopardy. In Jacob Mathew v. State of Punjab[7], a 3-judge bench of SC quashed a medical professional's prosecution u/s 304-A/34, holding that "doctors shouldn't be held criminally liable unless there is prima-facie documented evidence of a credible viewpoint from some other competent doctor, preferably a Govt doctor in same field, supporting the rebuke."

Conclusion

The role of forensic science in solving crimes includes actions such as determining the cause of death, identifying suspects, locating missing individuals, and describing perpetrators. Forensic pathologists use autopsies to determine the cause of death. During these procedures, they analyze a person's fluids and tissues to determine the cause and manner of death. forensic specialists can identify suspects by analyzing evidence collected at the scene of a crime, such as fibers, hairs, blood, and fingerprints. These methods are also used to exonerate innocent people. They could use picture manipulation technologies to help find those who have been missing for a long time. This is how a picture is aged to show what someone could look like years after they were last seen. This strategy is also used to track out criminals who have escaped justice. They can restrict the suspect pool by studying a crime scene and identifying a criminal's tendencies and characteristics. So, clearly, attorneys must study medical jurisprudence, and doctors must know the law in order to discover the truth and

[6] Appeal (crl.) 778 of 2004
[7] Appeal (crl.) 144-145 of 2004

communicate it to lawyers and judges. Understanding legal principles also protects them from getting irresponsible. Medical professionals should not be prosecuted indiscriminately for criminal carelessness since it is ineffective and serves no one. There has to be a connection between blame, guilt, and the need for justice. The writers of Errors, Medicine, and the Law emphasize the relationship between moral blame, accountability, and justice when it comes to the medical profession and carelessness. In order to be convicted of a serious crime, the accused must have acted in a morally reprehensible manner. While carelessness and purposeful wrongdoing are morally repulsive, any action that falls short of those standards should not be punished. Previously, common law systems only made carelessness a criminal offense when the amount of negligence was very high, a circumstance known as gross negligence. Indeed, at that level, carelessness and recklessness are likely to be interchangeable. Finally, forensic science is defined as the intersection between natural scientific concepts and legal principles. This union's forensic experts use their scientific skills to assist law enforcement officers in the investigation of crimes.

BIBLIOGRAPHY

- John A, “Criminal Evidence” (2nd ed Sweet & Maxwell, 1992).
- VR Manohar, “The Criminal Law Journal Yearly Referencer”, AIR Pvt. Ltd (1973).
- Aparajita Dutta, “Mental Element in the Commission of Crime”, 2 GLR (2012).
- Billy J., “Criminal Law-Impossible Attempts”, 26 LRR (1966).
- Halsbury's Law of England (4th ed Vol. 11).