WHITE COLLAR CRIME AND UNCONSTITUTIONALITY OF THIRD-DEGREE METHOD

Palak Pasi*

ABSTRACT

This research article presents a critical study of white-collar crime in India. It aims to understand the concept of white-collar crime in India. White-collar crime means crimes committed by educated people belonging to a higher class of society during the course of their occupation. This article discusses what differentiates white-collar crime from ordinary crime. It can also be called as the crime of educated and professional elites. This article also discusses the major theories of white-collar crime, including Sutherland's differential Association theory, which explains how criminal behaviour can be learned through social interactions. This also includes the theories of white-collar crime and the major Indian laws laying down offences relating to white-collar crime.

Keywords: White-collar Crime, Fraud, Psychology, Abuse of Authority.

INTRODUCTION

Generally, when we talk about crime offences like theft, robbery, murder and assault, they come to mind, but some crimes in society are committed by educated, prestigious, financially strong or highly placed people during their profession or business. This is called by white-collar crime; for example, bank fraud, money laundering, financial fraud by a company, and tax evasion by a businessman. People who perpetrate this crime often have a superior awareness of the people they are working with, technology, their area of discipline, and so on.

Second, let us understand by 'third degree method' third degree method refer to illegal and coercive means the use of physical or mental torture by police during interrogation to obtain Information, confession, or cooperation from a person these methods often involved giving

*BA LLB (HONS), FIFTH YEAR, MANGALAYATAN UNIVERSITY JABALPUR.

electric shocks, physical assault, psychological pressure etc. These are against constitutional and legal provisions in India.

Common Techniques used –

Mental Torture: threats to family, fake encounter, verbal abuse, etc.

Physical Torture: electric shocks, beating with rods, sleep deprivation, etc.

Deprivation Method: toilet access, sleep deprivation to break down mental resistance, etc.

HISTORICAL BACKGROUND

The most influential criminologist of the 20th century and also a sociologist, **Edwin Hardin Sutherland.** Since sociologist Sir Edwin Sutherland first characterised the word "white-*collar crime*" in 1939, he defined it as *"a crime committed by a person of respectability & high social status in the course of his occupation"*. Basically, white-collar crimes are crimes committed by people who enjoy a high social status, great repute and respect in their occupation. The five attributes of the given definition are: it is a crime; it is committed by an important person in the company; they enjoy high social status in the company; it is committed in the course of their profession or occupation; and there may be a violation of trust.[1] Before Edwin Hardin Sutherland talked about this phenomenon, the concept that businessmen who are known to be Virtuous could be a potent danger to society as they commit such crimes under the veil of their reputation was stated by E.A. Ross.

WHITE-COLLAR VS ORGANISED CRIME

White-collar crime is committed by individuals through their profession, while organised crime is committed by an organised group of criminals. White-collar crime generally involves fraud, corruption, cheating, and misuse of authority. Organised crime may involve drug trafficking, smuggling, extortion and human trafficking. The main objective of white-collar crime is usually to obtain financial benefits through dishonest practices, whereas organised crime aims to generate illegal profits and may also seek power and control over particular activities or areas. White-collar crime can cause financial losses, weaken public trust, and damage the economy; on the other hand, organised crime can threaten public safety, encourage corruption

[1] *Edwin Hardin Sutherland:* introduced the term white collar crimes

and create fear and insecurity in society. White-collar crimes generally do not involve direct physical violence. In contrast, organised crime may involve violence or threats to maintain control or prevent opposition.

COURT RECOGNITION

In the case of ***United States v. Bernard L. Madoff,*** on 29 June 2009, U.S. District Judge Denny Chin sentenced Madoff to 150 years of imprisonment. This was the maximum punishment available against him. The court took into account the gravity of his crimes, the prolonged deception, the abuse of the victims' trust and the large number of victims. Madoff was also ordered to forfeit $170.799 billion.[2]

In the case of ***State of Maharashtra v Bharat Shanti Lal Shah*****,** the Supreme Court of India upheld the constitutional validity of key provisions of the Maharashtra Control of Organised Crime Act, 1999 (MCOCA), while affirming that provisions dealing with wiretapping and the automatic denial of bail were unconditional. The landmark ruling balanced the state's power to combat organised crime against individual fundamental rights and the federal division of legislative power.[3]

UNCONSTITUTIONALITY OF 'THIRD DEGREE' METHOD

The third-degree method is a practice in which police use physical or mental torture to force an accused person or suspect to confess to a crime or provide information during an investigation. For example, if the police beat a person in custody to make them admit that they committed a theft, it is an example of the third-degree method. The police have the authority to investigate offences and question suspects, but they do not have the right to torture anyone, and a person cannot be treated as guilty because the police suspect them of committing a crime. The main problem with this method is that a person may confess to something they did not to simply escape pain or fear; therefore, a confession obtained through torture may be unreliable, and the practice violates human dignity.

- India is a government under the Constitution, which protects the rights of every person, including those who are accused of committing an offence; police investigation must take place within the limits of the law.

[2] *United States vs Bernard L. Madoff (2008)*
[3] *State of Maharashtra vs Bharat Shanti Lal Shah (2008) 13 SCC* 5;

- The third-degree method is unconstitutional when it violates these protections: the right to life and personal liability and, protection against compelled self-incrimination, and safeguards against arbitrary arrest and detention.

CONSTITUTIONAL FRAMEWORK

Article 21 - Right to Life and Personal Liberty — it says that *"No person shall be deprived of his life or personal liberty except according to a procedure established by law".* But the third-degree method violates Article 21 because the right to life means not merely physical survival; it also includes the right to live with human dignity. It violates the dignity of a person, causes physical pain, injury and psychological suffering, causes permanent disability or even death, and allows police officers to misuse their authority. For example, if a police officer beats a suspect in custody to force a confession, the conduct may violate Article 21; the fact that the person is under arrest does not remove their fundamental right.[4]

Article 20(3) - Protection against Self-Incrimination — it says that *"No person accused of an offence shall be compelled to be a witness against themselves".* But the third-degree method violates Article 20(3) when the police use physical violence or threats to force a confession, and the accused is forced to provide information that may be used against them, and the confession is obtained through compulsion rather than free choice; for example, if an accused person is beaten until they admit to committing theft, the confession has been obtained through coercion.[5]

Article 22 - Protection Against Arbitrary Arrest and Detention — it provides important safeguards for an arrested person, who must be informed of the reasons for their arrest and has the right to consult and be defended by a lawyer of their choice, and the requirement to be produced before a magistrate within 24 hours of arrest; but the third-degree method violated Article 22 because police use unlawful violence during concealment of injury and prevent access to legal assistance or keep a person in custody contrary to legal requirements. It violates Article 22 and does not use the words "third-degree" method, but its protection must be read alongside Article 21 and the legal safeguards against custodial abuse.

Article 14 - Equality before Law — it says that *"The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India".* Every

[4] Article .21
[5] Article .20(3)

person is equal before the law and is entitled to equal protection of the laws. This means that police officers and government authorities cannot violate Article 14 because the police misuse their power and treat a person unfairly or arbitrarily, and every person has the right to equal treatment under the law, whether they are rich or poor or accused of a crime. Police cannot use torture against a person because they suspect them of committing an offence; therefore, the third-degree method violates Article 14. For example, suppose the police beat a poor person to force them to confess to a theft without following the law; such treatment violates Article 14; it involves arbitrary or discriminatory use of police power.[6]

The prohibition on custodial torture is supported not only by the Constitution but also by criminal procedure and the Bharatiya Sakshya Adhiniyam (BSA) 2023, which deals with the admissibility of evidence, and the Bharatiya Nyaya Sanhita (BNS) 2023, which provides criminal offences and punishment.

Section 22 (BSA) – Confession caused by Inducement, Threat, Coercion or Promise: It provides that a confession is irrelevant in criminal proceedings when the court finds that it was caused by a qualifying inducement, threat, coercion or promise made by a person in authority in the circumstances described in the section, or is related to the third-degree method, when police torture or threaten an accused person to force a confession; that confession may be excluded from evidence under Section 22. This provision helps protect accused persons from being forced to admit a crime against their will.

Section 23 (BSA) – Confession to a Police Officer – It prevents a confession made to a police officer from being proved against an accused person. It also generally excludes a confession made while in police custody unless it is made in the immediate presence of a magistrate. The section provides a limited exception for information that is distinctly related to a fact discovered as a result of that information. This section is related to the third-degree method because sometimes police use physical force or threats to make an accused person confess to a crime. The law does not allow the police to rely on a confession because they have obtained it through torture; this provision helps protect accused persons and supports a fair investigation.

Section 120 (BNS) – Voluntarily causing hurt or grievous hurt to extort a confession:

[6] Article .14

(1) If a person voluntarily causes hurt to obtain a confession or information about an offence, the punishment may extend to seven years' imprisonment and a fine.

(2) If a person voluntarily causes grievous hurt for this purpose, the punishment may extend to ten years' imprisonment and a fine.

Section 183 (BNSS) - It says that Section 183 provide safeguards for recoding confession before a magistrate. The magistrate must explain that the person is not bound to confess voluntarily. The provision specifically illustrates a police officer torturing a person to make them confess conduct covered by the section.

LANDMARK JUDGEMENTS

In the case of ***D.K. Basu v State of West Bengal,*** the Supreme Court of India delivered an important judgment to prevent custodial torture and protect the fundamental rights of arrested persons. The case arose after concerns were raised about death and torture in police custody; the court recognised that using physical violence, threats or other forms of torture during interrogation violates human dignity and may breach Article 21, which guarantees the right to life and personal Liberty. The court laid down guidelines that police must follow during arrest and detention, including: preparing an arrest memo, informing a friend or relative about the Arrest, maintaining Proper custody records, recording injuries, arranging medical Examinations, sending arrest documents to the magistrate and allowing the arrested person to meet a lawyer during interrogation. These safeguards aim to ensure that police investigation is conducted lawfully and that no person is forced to confess through torture. The judgment also emphasised that failure to follow these guidelines could result in Departmental action and contempt proceedings.[7]

In the case of ***Nilabati Behera v State of Orissa***, the Supreme Court of India held that the state was responsible for the custodial death of Suman Behera and that his death violated the fundamental right to life guaranteed under Article 21. The court directed the State of Orissa to pay ₹ 150,000 as compensation to his mother and ₹10000 towards costs to the Supreme Court Legal Aid Committee. The judgment established that the Constitutional Court can award compensation under Articles 32 and 226 when the state violates fundamental rights. The court clarified that the state cannot avoid responsibility for violations committed by its officials while

[7] *D.K. Basu vs State of west Bengal (1997) 1 SCC 416*

a person is in custody. This judgment is significant because it strengthened protection against custodial violence and established that every person, including someone in police custody, has the right to life and human dignity.[8]

CONCLUSION

White-collar crime and unconstitutionally of third-degree method are two Important issues in the Indian criminal justice system. White-collar crime is generally committed by individuals or professionals who misuse their position, knowledge or authority for personal or financial gain. Such crime can damage the Indian economy Increase Corporation and we can public trust in institution. On the other hand, the third-degree method involves the use of physical or mental torture by police to obtain information or force a confession. This practice is against the principle of justice and Human dignity. It may breach Fundamental rights under Articles 21, 20(3), 14 and 22. In *D.K. Basu v State of West Bengal (1997)* and *Nilabati Behera v State of Orissa (1993),* the Supreme Court emphasised the protection of human rights and accountability for custodial abuse. Therefore, crime must be investigated through lawful methods, and justice must be ensured without violating Constitutional rights.

[8] *Nilabati Behera vs state of Orissa (1993) 2 SCC 746*