

WHITE COLLAR CRIMES: LEGISLATIVE FRAMEWORK IN INDIA

Yogesh Nandal

Student

Maharshi Dayanand University, Rohtak

Email: yogeshnandal1995@gmail.com

Abstract: White-collar crime is a non-violent crime where the primary motive is typically financial in nature. White-collar criminals usually occupy a professional position of power and/or prestige, and one that commands well above average compensation. This paper analyzes a critical study on white collar crime in India. White collar crime basically means the crime committed by the educated people belonging to a higher class of society during the course of their occupation. It can also be called as the crime of educated and professional elites. In this article the author has further discussed the common types of white-collar crimes evolved in India from last few years. And how this has become a socio-economic crime. Besides this there are crimes which are involved in different profession i.e., in medical, education and legal profession. The paper highlights various legislations of Indian laws which talks about the punishment of these type of crimes.

Keywords: White Collar Crimes, Blue Collar Crimes, Indian Penal Code, Constitution of India

1.0 Introduction

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

2.0 Meaning of White-Collar Crimes

The term “white collar crime” was coined by the American criminologist and sociologist Edwin Hardin Sutherland during the 1930s.

Crimes to fulfil a financial motive, although non-violent, fall under white-collar crimes. Miscreants who commit this crime are usually rich, educated and belong to high social status.

The most common cases of white-collar crimes are money laundering, tax evasion, embezzlement, insurance fraud, identity theft and securities fraud. Such criminal activities feature the use of concealment and deceit to commit fraud or gain a corporate advantage.

White-collar crimes are frequently growing in third-world countries due to the disparity in economic standings. Although non-violent, white-collar criminals do more harm to society than most other forms of crime.

3.0 History of White-Collar Crimes

Edwin Sutherland an American sociologist who first defined the white-collar crimes in the global. He described this crime to be committed by the person of high social status as compared to those who commit ordinary crimes during the course of his employment. In 1934, Agan Morris drew attention to the necessity of a change in emphasis regarding crime. He arrested that anti-social activities of persons of high status committed in course of their profession must be brought with the category of crime and should be made punishable. Finally, E.H. Sutherland through his pioneering Work emphasised that these ‘Upper Worked crimes which are committed by the persons of upper Socio-economic groups in course of their occupation - violating the trust, should be termed as “White Collar Crime” So as to be distinguished from traditional crime which he called “Blue Collar Crime” And the concept of White-Collar Crimes found its place in criminology for the first time in 1941.

4.0 White Collar Crime Vs. Blue Collar Crime

The criminals of white-collar crime are relatively more intelligent, smart and successful men of the higher class than the ordinary criminals. These crimes are difficult to detect and not at all personal. And on the other hand, the ordinary crimes are direct and are very personal. They also involve violent methods such as using force to commit crime. The ordinary criminals are usually afraid of the law agencies after committing the crime but the white collar criminals are not at all afraid of the law agencies because of the fact that if they got detected they will be fined or transferred or the maximum that they will get a short-term imprisonment. Another difference between blue and the white collar crime is that the economic loss of white collar crime is thousands time higher than that of the ordinary crimes. The financial loss which the society has to bear is higher in white collar crimes than the crimes committed by the people of low-social standard. White collar crime committed out of greed and it is very well planned and executed on the other hand blue crimes are usually committed out of rage, revenge and other emotions. In white collar crime harm is caused to the casualties or cash but harm is physical in case of blue collar crime.

5.0 Reasons of White-Collar Crimes in India

White-collar crime cases are rampantly growing in India because of the major disparity between social classes. Also, poverty, lack of awareness and gullibility play factors promoting white-collar crimes in India in many instances. The following are a few reasons contributing to the growth of white-collar crime in India.

5.1 Lack of Strict Laws: It would be wrong to state that India has no laws to monitor financial fraud. However, due to the lack of amendments, many perpetrators can successfully exploit the loopholes in these laws. Secondly, as the internet is the most popular medium of monetary transactions today, many white-collar crimes happen through it. However, due to weak cyber laws, it becomes tough to track down these perpetrators. This contributes to an advantage for the criminals to exploit.

5.2 Greed: The fact that a person of high social standing commits a white-collar crime implies how greed drives a man. The want for more wealth to shine better than their competitors or escape taxes tempts a person more than anything.

5.3 Lack of Awareness Among the General Population: Most often, commoners who fall prey to scams do not know where to report them. Also, they choose silence over taking action whenever a big corporation or bank is involved in such cases. This boosts the confidence of these scammers, and they go on innovating new ways to fool the general mass. Thus, we can say the lack of knowledge amongst the general masses plays a vital role in the high increase of white-collar crimes.

5.4 Rush for Power: In today's rat race world, we tend to materialise Charles Darwin's survival of the fittest theory. We try to beat our peers and competitors in our daily endeavours. This competition escalates as we move up the social ladder of wealth and hierarchy. White-collar crimes become a shortcut to winning more power and wealth over their competitors in no time.

5.5 Biased Law: Very often, we hear cases about white-collar criminals easily escaping Indian laws. This happens mostly with influential people like political leaders or business tycoons. They tend to tweak rules to their favour with corrupt means. The police also, under their influence, allegedly put less pressure on investigations and protected them from the general mass. This influence over law and order is an upper hand to escape white-collar crime easily. This is also the very reason why many people hesitate to report a complaint against such large organisations. This also reflects the citizens' loss of faith in law and order today.

6.0 Types of White-Collar Crime

White-collar crime encompasses a wide range of offenses, including the following:

6.1 Fraud: Fraud is a broad term that encompasses several different schemes used to defraud people of their money. One of the most common and simplest is the offer to send someone a lot of money if they will simply send the fraudster a little (the fraudster may represent the smaller sum as being a processing or finder's fee). Of course, the fraudster gets the money that is sent to him but never sends out the money he promised to send.

6.2 Insider trading: Insider trading is trading done with the benefit of the trader possessing material, non-public information that gives him or her an advantage in the financial markets. For example, an employee at an investment bank may know that Company A is preparing to acquire Company B. The employee can buy stock in Company B

with the expectation that the company's stock will rise significantly in price once the acquisition becomes public knowledge.

6.3 Ponzi scheme: Named after Charles Ponzi, the original perpetrator of such a scheme, a Ponzi scheme is an investment scam that offers investors extremely high returns. It pays such returns to the initial investors with the newly deposited funds of new investors. When the scammer is no longer able to attract a sufficient number of new clients to pay off the old ones, the scheme collapses like a house of cards, leaving many investors with huge losses.

6.4 Identity theft and other cybercrimes: Identity theft and computer system "hacking" are two of the most widespread computer crimes. It's estimated that losses from identity theft in the United States alone totalled nearly \$2 billion in 2019. California, with over 73,000 cases of identity theft reported, was the state whose citizens suffered the most from the crime – Florida was a very distant second with 37,000 reported cases.

6.5 Embezzlement: Embezzlement is a crime of theft, or larceny, that can range from an employee taking a few dollars out of a cash drawer to a complex scheme to transfer millions from a company's accounts to the embezzler's accounts.

6.6 Counterfeiting: Our money has become more colourful and expanded in detail because it had to in order to combat counterfeiting. With today's computers and advanced laser printers, the old currency was just too easy to copy. However, it's questionable how successful the government's efforts in this area have been. Rumour has it that very high-quality copies of the new \$100 bill were available within 24 hours of the new bill first being issued.

6.7 Money laundering: Money laundering is a service essential to the needs of criminals who deal with large amounts of cash. It involves funnelling the cash through several accounts and eventually into legitimate businesses, where it becomes intermingled with the genuine revenues of the legitimate business and is no longer identifiable as having originally come from the commission of a crime.

6.8 Espionage: Espionage, or spying, is typically a white-collar crime. For example, an agent of a foreign government that wants to obtain part of Apple Inc. technology might approach an employee at Apple and offer to pay them \$10,000 if they will provide a copy of the desired technology.

7.0 Examples of White-Collar crimes:

7.1 Harshad Mehta Securities Fraud (1988-1995) : Stockbroker Harshad Mehta founded Grow More Research & Asset Management Limited, a security company, in 1990. Investors blindly followed Mehta's lead because he was a well-known name in the stock market and was known as the "Sultan of Dalal Street." He created a fictitious market by borrowing sizable sums from the bank and buying the scrips at exorbitant prices. He took advantage of his position to manipulate certain scrips' stock prices for his own benefit. This led to an unnatural infusion of cash into the stock markets, which abnormally increased the price of these shares. Despite being immoral, Harshad Mehta's action was legal.

7.2 Satyam Scandal: biggest-ever corporate accounting fraud: A confession letter written by B. Ramalingam Raju, founder and chairman of Satyam Computers Services Limited, and published in Times of India on January 7, 2009, revealed this scam. In the letter, he admitted to tampering with his books of accounts by inflating assets and understating liabilities. The company's financial situation is reflected in the books of accounts. Before making an investment, investors can rely on them as a crucial tool. Accounts books were falsified in order to defraud shareholders and investors. The total cost of the fraud was around 14,000 crore, and it is thought to have played a significant role in the 2009 recession. In response to this scandal, SEBI responded forcefully, finding Ramalinga Raju and nine significant associates guilty of insider trading as well as engaging in dishonest and unfair business practices. In addition to prohibiting the accused from entering the security markets in any way for a period of 14 years, SEBI ordered the accused to pay approximately 3000 crores within 45 days. In order to ensure that a similar scam never occurred again, SEBI was able to respond strongly.

7.3 Ketan Parekh Security Scam: From 1999 to 2001, Parekh engaged in circular trading and stock manipulation. He borrowed money from financial institutions like Global Trust Bank and Madhavpura Mercantile Co-operative Bank and used it to manipulate many K-10 stocks. The scandal cost roughly ₹ 1,250 crore. Despite serving only one year in prison, he will not be permitted to trade on the Indian stock market until 2017.

Although he has been accused of performing from behind the scenes his name still echoes down the street. Parekh and his associates were allegedly involved in insider trading and circular trading through front companies, according to an Intelligence Bureau Report.

7.4 Saradha chit fund case: The collapse of the Ponzi scheme run by Saradha Group, a group of 200 private companies that were allegedly running collective investment schemes popularly and incorrectly referred to as Chit Fund, resulted in significant financial fraud as well as an alleged political scandal. With the promise of a multiplied substantial sum in return in the form of cash or real estate and other assets, this group amassed around ₹30,000 crores from more than 17 lakh depositors. It was claimed that at least 10 Saradha group entities had defrauded the public by participating in money-pooling schemes. SEBI banned Saradha Realty India and its managing director Sudipta Sen from the securities market until the group wound up all the Collective Investment Schemes (CIS) and made the refund, as the same amounts to CIS Violation, despite ongoing public protest against the group's alleged fraudulent activities.

7.5 Punjab National Bank Fraud: The 85th richest person in India is the diamantaire and eminent jewelry designer Nirav Modi. Bank claimed that Modi and the businesses connected to him conspired with the bank's representatives to obtain guarantees or letters of undertaking from other foreign banks to help finance buyers' credit. According to PNB's preliminary investigation, two bank employees fraudulently issued Los to the aforementioned firms without following the proper procedure. Then, based on these Los, credit was extended to the aforementioned firms via the SWIFT messaging system. PNB claimed that the money purportedly raised for the purpose of buying and selling diamonds was not put to use. PNB released information to the stock exchange regarding the identification of unauthorized and fraudulent transactions. A ₹11,400 crores fraud was discovered at PNB, making it one of the biggest in the Indian banking industry.

7.6 2G Scam: This scheme involves the fixed-price sale of licenses for the 2G spectrum. A Raja also took this action because using an auction resulted in less profit. He granted licenses to applicants who weren't qualified. In addition to lying, these applicants provided false information, and missing information, and concealed them. As a result, ₹ 1.76 lakh crore were lost as a result. On November 16, 2010, the Comptroller and Auditor General of India released a report on their crime. Also, the charge sheet was 80,000 pages long because the crime was so heinous. Additionally, the CAG report noted that these significant stakes were sold to both Indian and foreign companies at a high premium. Then, they completed the task in a very short amount of time. Finally, they assert that the value earned by these ineligible applicants and the real value of the spectrum were exactly the same.

7.7 CWG scam: Athletes from the Commonwealth of Nations compete in a variety of sports at the Commonwealth Games, which is an international competition. It occurs once a year. It is run by the Commonwealth Games Federation. The Commonwealth Games scam was carried out by Suresh Kalmadi. He oversaw the Games' planning committee as its chairman. As a result, he awarded the Swiss Timings the ₹141 crores contract. Furthermore, Swiss Timings' time equipment cost ₹95 crores. Additionally, the sports officials were required to live in subpar accommodations by the chairman. The Central Vigilance Commission learned about the CMW scam at this time. Along with providing fewer facilities for athletes, this scam resulted in the theft of ₹ 70,000. They were detained on charges of cheating, conspiracy, corruption, and forging documents with the intent to cheat. In India, this is unquestionably a serious white-collar crime.

8.0 Legislations Against White Collar Crime in India

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

- Companies Act, 1960.
- Income Tax Act, 1961.
- Indian Penal Code, 1860.
- Commodities Act, 1955.
- Prevention of corruption Act, 1988.
- Negotiable Instrument Act, 1881
- Prevention of money laundering Act, 2002.
- IT Act, 2005.
- Imports and Exports (Control) Act, 1950.

9.0 Conclusion

White collar crimes are the crimes which cause a harm to the economy of the country as a whole. It threatens the country's economy by bank frauds, economic thefts, evasion of tax etc. It not only affects the financial status of a country or a person but it has also a negative impact on the society. The various crimes such as bribery, corruption, money laundering has affected society in a negative way. There is no proper definition of White-collar crime in Indian laws. These socio-economic crimes should not be taken leniently by the government. Punishment regarding White collar crime should be stricter as harsh punishment can prevent these crimes to a great extent. If the crime is very heinous the punishment might also be extended to life imprisonment. People are not aware about most of these crimes so the public awareness through any communication medium is also necessary.

10.0 References

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