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White Collar Crime: An Overview

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ABSTRACT

With the growing technology and massive corporations which are custodians to huge resources public as well as private the growth in white collar crimes is also witnessed. Though white-collar crimes are popularly known as victimless crimes because of their impersonal and non-tangible nature, it can be a harbinger of huge losses to economy and public confidence. Seeing the kind of effect white collar crime can have on an economy and public it becomes increasingly important to understand the crime in an exhaustive manner. The paper tries to analyse white collar crime, its conflicting definitions from different perspectives. After which the writer throws some light on the role of an organization in acting as a catalyst for fulfillment of motive of the criminal. The writer also discussed about the impact of white-collar crime and how it is different from its traditional counterpart and the penal provisions which are added in solving white collar crimes. Along with these types of white-collar crime and those recent cases related to white collar crimes are discussed. It is not just important to understand white collar crime but also find ways to curb growing nuisance relating to the crime the paper discusses measures which can be used to reduce white collar crime.

Keywords: *White-Collar Crime, Traditional Crime, Financial Frauds.*

I. INTRODUCTION

The term white collar crime was first coined in 1939 by criminologist Edwin Sutherland to describe the category of crimes perpetrated by the upper class of society. Before the instance of recognition given to white-collar crime it was quite difficult to fathom that the rich, respectable members of the society were capable of any criminality. Santhanam Committee which was appointed in 1962 to review the problems relating to corruption laid special importance to a new form of malpractice which was white collar crime. The report pointed out that the technological advancement and the increase in clusters of gigantic firms and monopolies concentrates big role and responsibilities in a few hands and if these people who are in a managerial and top-notch position decide to forgo law and ethics it would lead to

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economic offences of unimaginable proportions.

After analyzing the various definitions of white color crimes, it can be concluded that these definitions face a lot of inconsistencies. It is difficult to pinpoint what exactly does the term white collar crime connote. There can be a series of meanings which can be derived from the term it could point towards the actors committing it and their social status, types of offences or modus operandi chosen to execute the crime. The only consistent denominator when referring to white collar crime is the characteristic of the violator and his or her social standing. This theme was highlighted by Edwin Sutherland where he pointed that white collar crime is a crime committed by a person of responsibility and high social status in his occupation.

Sutherland laid a lot of emphasis of social status distinction as before the occurrence of this category of criminality, criminological theories attributed criminality with poverty. But after occurrence of white-collar crimes where the crime was perpetrated by someone with high social standing this notion was strongly dismissed. International Encyclopedia of social studies define white collar crime as 'Lawbreaking among the middle and upper socioeconomic classes.' Though social class standard of defining white collar crime has a speck of truth in it but it is more efficient polemically rather than theoretically. As this view of defining white collar crimes have been rejected by many scholars; as it would mean that the crimes like murders, rape which are more conventional in nature are not capable of being perpetrated by upper class people. Which is absolutely false as conventional more personalistic crimes are as prominent in upper strata of society as it is in lower or economically weaker sections of society.

Analyzing the drawbacks that social status related definition pose, Sutherland tried to define white collar crimes keeping in mind the social location of the offender. The definition now encompasses the crimes which are committed by an individual with regard to their occupation. By laying emphasis on the occupation of the individual, social scientists try to point towards the actual opportunity which an individual might encounter to commit crimes, such opportunities which are unique to him alone. Conventional criminals cannot fathom to ever encounter the kind of opportunities fiscally which are presented to people who commit white collar crimes. They are placed in settings where they are responsible for a lot of people's resources.

Though social location or occupation theory of defining white collar crime tries to solve certain drawbacks presented by social status theory but it has its own set of ambiguities and discrepancies. The occupation theory includes a lot of type of crimes which are traditional in nature, it fails to define the confines of white-collar crime. Whether having an extra marital

affair is a traditional offence but having an affair with the secretary come under instance of white-collar crime? Torching the factory to gain insurance sum would come within the ambit of white-collar crime and is an arsonist different than the person burning down the factory? Will the crimes perpetrated by these two individuals will attract different punishments even when the nature of both the crimes similar? What about the conventional kinds like assault, adultery, murder happening in an occupational setting whether these crimes would also be regarded as occupational crimes?

The leading factors which make the occupation location perspective of defining white collar redundant are – a) what will constitute a occupational location and its ambit; b) whether all the crimes which are perpetrated in occupational location constitute or be labelled as white-collar crime? These aspects of defining white collar crimes have blindsided the role an organization plays in commission of white-collar crime.

II. INDIVIDUAL ROLE VS ORGANISATIONAL ROLE

Traditional definitions have fixated lots of emphasis on individualistic aspect of white-collar crimes, but an organization has a big role to play when it comes to white collar crime. Without an organization a crime of this magnitude would be rather impossible. It becomes important to shed some light on the organizations role as compared to just an individual when it comes to committing white collar crime. The criminal who perpetrates white collar crime just exploits the opportunity that is presented by the organization. The way in which organization acts as a modus operandi in commission of white-collar crime are further discussed.

The organization can act as a set up or facade which is used by a criminal to fulfill his illegal activities as can be seen in case of bank frauds, shell companies which are used for embezzlement of money, public corruption etc. These companies lack any substantial value of their own and are often used to evade tax or by terrorists for funding. June 2011 Reuters found more than 2000 companies being register to a brick home in Wyoming. These companies were used by criminal operators.⁴ Recently in PNB Banking fraud case 120 shell companies are being looked into by enforcement directorate which are connected to Nirav Modi.

Organizations are not some passive entities which are a host of economic activities many organizations are responsible for creating commodity and effecting services that can affect entire nation. This kind of power which is in an organization is also a harbinger of many forms

⁴ Reuters Staff, INDIAN AGENCY PROBING 100 SHELL COMPANIES FOR LINKS TO BANK FRAUD CASE U.S. (2018), <https://www.reuters.com/article/us-punjab-natl-bank-fraud-probe-shell-idUSKCN1G419Q> (last visited Jul 30, 2021).

of abuse. The parties who are dealing from within the organizations can indulge in practices which will eventually lead to the downfall of the whole institution such as a bank manager giving loan without actually scrutinizing can lead to scam which can doom the income of many innocent individuals. In the same way people from outside can use influence or bribe to affect the functioning of the organization. Outsiders can use negative or positive incentives to affect such behavior this can be seen in the case of government bureaucrats.

The impersonal nature of the transactions happening in the organizations have a leading role in white collar crimes such as financial misrepresentation. This nature of crimes is very evident in the infamous Satyam computers scam. The techniques used by organizations for financial misrepresentation includes profit inflation, debt suppression. The modus operandi in such case being fake investments, transfer of loan to associate companies or bogus firms which was used by the scamster Ramalinga Raju of Satyam computers. Manipulation of profits for tax evasion purposes is also one of many unscrupulous ways used by large organizations for commission of crime.

This is the reason organization's role in perpetration of white-collar crime can never be ignored. Moreover, organization acts as a way through which the criminals are able to fulfill their evil intentions which would be impossible for them in their individual capacity.

III. IMPACT OF WHITE-COLLAR CRIME

(A) Impact on society

White collar crimes have jolted the confidence of people in the economy. It has the potential to wipe out savings of individuals, cause huge job losses, reduce share prices. The recent bank frauds have impacted the attitude of people towards the banking system, if such practices carry on it would dent the economy as a whole as banks are linked to other sectors of society through 'network externalities.'

(B) Impact on customers

An organization which has a history of getting on the wrong side of law is seen with suspicion by the customers. No customer wants to deal with companies and organization which are involved in criminal activity. The frauds which come to light before the customers shakes their confidence in the company which in turn effects the economic activity in the country.

Impact on company

A tainted reputation of company due to white collar crimes can tarnish years of hard work and labor and ultimately can result in the end of the company. One culprit in the company can

disproportionately impact the profits of a company.

IV. CONTRAST BETWEEN WHITE COLLAR CRIME AND TRADITIONAL CRIME

White crimes committing criminals are savvy, more educated in their approach to crime and stable in appearance when compared to common criminals. These people have a social standing and belong to the cream layer of society. The most distinguishing feature of the white-collar criminals are that, they perform crimes which are hard to distinguish because of its originality and creativity. When compared to conventional criminals who map out and execute crimes that are more tangible and physical in nature such as assault, destruction of property etc.

The blue-collar crimes which is a synonym of traditional crimes are the types of crimes that society is used to condemn. The criminals that are involved in these types of crimes have a track record and are more direct in the manner they achieve the results. Whereas, white collar criminals who belong to the upper strata of society and who are often seen in the company of politicians and public figures are hard to be scrutinized. Even the stigma associated with white collar crimes is different than the shame which is associated with conventional crimes.

The reason for the differential treatment of both type of crimes lies on the fact that white collar crimes are more complex to understand and are more appreciated by the experts in the field. Even though the complexity of white-collar crimes is higher but never the less the damage its capable of inflicting far exceeds than the damage conventional crimes can do. White collar crimes not only cause huge financial loss but also dents public faith in the economy.

Sutherland⁵ also highlights the reasons behind the white-collar criminals going unpunished, he states that the difference in the social status of the criminals make it hard for the authorities to punish them. The cheating practices that are deployed to commit crimes by small merchants can't be used as a tool to find the sophisticated crimes committed by white collar criminals. These crimes can only be detected by, thorough research, forming a committee or through intimate gatherings.

V. SPECIAL PENAL PROVISIONS INCORPORATED IN WHITE COLLAR CRIMES

When dealing with white collar crimes the penal provisions go through a shift in approach; the punishments can be in shape of departmental enquiries as provided in Income tax Act, Customs Act, Stamp Act. The form of punishment can be through confiscation of goods or

⁵ EDWIN H. SUTHERLAND, *WHITE-COLLAR CRIMINALITY*, Volume 5, American sociological review, pp. 1-12,(Feb., 1940).

revoking of license granted to the party.

The need for mens rea which is a pertinent element when dealing with a conventional crime also goes through tremendous change when it comes to white collar crimes. Where in conventional criminality it is important to prove mens rea this requirement is accepted in a modified form when it comes to sophisticated crimes. This attribute of white-collar crimes can be seen in many provisions; such as, under Customs Act reading section 167(12A) and 52A together it is clear that any vessel entering Indian high seas with goods that are concealed will be required to be concealed and the master of the ship would be liable to pay penalty. The provisions of the act have nullified the requirement of mens rea as complying with the provisions would render the purpose of the act ineffective. Supreme court to in a case relating to Foreign Exchange Act 1947⁶ also disposed with the requirement of proving mens rea as certain cases are of the nature where the liability is absolute in nature.

VI. TYPES OF WHITE-COLLAR CRIME

(A) Bank fraud

The most common type of white-collar crime is bank fraud where bank facilities like funds, cheques, overdraft facility is used to defraud the banks. As can be seen in PNB Bank fraud case ,according to RBI report in the year 2020 – 2021 an estimated amount of 1.38 trillion rupees were lost in bank frauds.

(B) Cyber crime

Crimes related to the internet and computer has increased during recent years. Cybercrime has not been defined under any Statute in India but is considered to be a crime that is committed through a computer by using of the internet. Cybercrime is tried only under the Information Technology Act 2000 (IT Act) , under Section 43, 66, 67, 69, and 72 of the Act. Section 66A of the IT Act 2000 was held unconstitutional in the landmark case of Shreya Singhal . Cybercrime as a white-collar crime includes cases of hacking of accounts of individuals to access their bank or card details, scamming individuals into investing or buying counterfeit products. It is also seen in the way of person illegally distributing information which is considered unlawful like distributing pornography etc. Cybercrime against the government is seen by hacking of government sites or databases. The types of cybercrime in India are:- cyber stalking, cyber terrorism, child pornography etc.

⁶ State v. M.H. George, A.I.R. 1965 S.C 722, para. 40.

(C) Money Laundering

Prevention of money laundering act was created by the legislators to keep a check on the crime of money laundering. In this type of crime criminals coverup their illegal money in the garb on some fake legal transaction ultimately this kind of money is used for terrorism or some illegal purposes.

(D) Cellular phone fraud

Cellular phone fraud is an unlawful use of mobile phones or services. The person who commits the Offense creates a fake account in the name of an individual to gain access to his or her bank details, card details and make transactions without the knowledge of the individual on behalf of whom the transaction is done. The IMEI number of a mobile phone should not be used unlawfully without the consent of the owner. The Mobile Device Equipment Identification Number, Rules 2017 lays down that it will be punishable with imprisonment for a maximum period of 3 years. The was made by combing of Section 7 and Section 25 of the Indian Telegraph Act, 1885. The Business Standard, published a report on the social media frauds have increased by 43% in the year 2018. Using of social media and mobile applications to commit frauds by individuals have seen a rise between 2015 and 2018 up to 680%. The same was seen at the time of the pandemic. Cellular fraud is a threat individual using social media and have to be careful while using social media . Itis also a kind of white-collar crime.

(E) Securities Fraud

Insider trading is one of the forms of securities fraud, in which an insider of the company uses non public information to make investment decisions. By using such information, the person tries to gain an upper hand in the market. This type of crime is a blow on the morals of the public who indulge in the securities market.

(F) Tax evasion

Tax evasion is illegal evasion of taxes by individuals, corporates and institutions. Tax evasion can be calculated as the difference between the actual tax to be paid and the amount of tax evaded. The Income Tax Act (ITA), 1961 under Chapter 22 has proscribed that the offence of tax evasion can result in a fine as well as imprisonment. Some circumstances of tax evasion constitute not filing a return as laid down under section 139(1) of the ITA. According to Form 26AS, no individual may provide a PAN card or an individual may provide a counterfeit PAN card and provide false information. Recently, the Income Tax Appellate Tribunal, in the case of Galaxy Nirman Pvt Ltd v. Acit, New Delhi has held that failure to pay the entire amount of self-assessment tax would constitute penal damages. Other Tax evasion circumstances are

when individuals, corporates or institutions not providing the right account of income so that they do not have to pay taxes and also not acknowledging the income tax notice sent to them for payment.

(G) Embezzlement

Embezzlement is a type of crime where a persons trusted funds are misplaced or misused for purposes other than which is promised for.

VII. CASES

(A) Harshad Mehta Securities Fraud

Harshad Mehta case was one of the landmark cases of white-collar crime in India.

He was known as the” Sultan of Dalal Street”. The investors blindly followed him. Mehta borrowed from the bank a huge amount of loan. The loan was used to buy the scrips at a high price which led to the creation of misrepresentation of prices in the market. Mehta used his reputation to manipulated the prices of the scrips for his gain. This resulted in the rise in the price of the stock. This thing done by Harshad Mehta was not considered unlawful though it was immoral.

All the problems arose when Harshad Mehta misappropriated the loan he had obtained from the bank to obtain capital to invest in the stock market, which was considered as the case of money laundering. It led to the biggest crash in the history of the Indian Stock Market. The Securities and Exchange Board of India (SEBI), to put a stop on such transactions brought various changes to their rules and regulations. This white-collar crime was exposed by the then renowned journalist Sucheta Dalal.

(B) Agusta Westland Scam

The AgustaWestland also known as the VVIP chopper scam is a perfect example of a white-collar crime in India.

The case deals with corruption charges. It was alleged that the “middlemen” and even the politicians were paid bribe so that twelve AgustaWestland helicopters could be bought, which were to be used by the President and Prime Minister of India. The VVIP choppers were built at an estimated cost of Rs 3,600 crore by the Italian defence manufacturing giant Finmeccanica. It was alleged that several parameters were not checked properly to give way for the deal to go ahead. The deal was signed in the year 2010 under the UPA government.

Italy discovered the scam which helped its coming to light in India in the year 2012. In 2014

the deal was cancelled by the Indian Government.

In the year 2020 the CBI had filed the chargesheet in which they have named the 15 accused.

(C) Satyam scam

On 7th January 2009 B. Ramalingam Raju chairman of Satyam computer services Ltd confessed via letter that company's account had been fabricated. Financial Statements and other records are evidence of the firm's liquidity crisis. These records work like significant apparatus as financial bankers depend upon them prior to expenditure. Record books were controlled to swindle financial backers and investors.

The entire fraud cost around 14000 crores and assess as a significant consideration and this was called the downturn of 2009. By Ramalinga Raju and other significant partners held liable on 10th April for fabricating accounts, income tax returns and falsifying invoice. SEBI suspended Ramalingam Raju and other partners for period of 14 years and imposed penalty of 3000 crores, which was to be filled within 1 month 15 days.

(D) Punjab National Bank Scam

Nirav Deepak Modi is a jewellery designer and businessman of India. Modi and his associated companies accompanied by their authorities in conspiracy to get the letter of undertaking and certification so that they could give credit to investors with the help of other overseas banks, such claimed by PNB.

Two officers of the bank had committed fraud. These two bank employees falsely issued LOU's to the company of Nirav Modi by utilizing SWIFT (international transmission system) for several years revealed in initial inquiries of PNB.

Apparently assets were increased to buy as well as sell jewellery but not used for this motive, such claimed by bank. PNB informed the stock exchange located in Bombay regarding deceitful and unauthorised dealings. This scam is of 1.4 billion in PNB, one of the biggest scams in Public Banking Sector.

VIII. MEASURES ADOPTED THAT CAN CURB WHITE COLLAR CRIME

Two-fold measures can be adopted to keep a check on white collar crimes. On governmental level and on departmental level.

(A) Governmental action

1. Proactive legislation

Criminals who indulge in white collar crimes are artful in their criminal activities, they find

new ways to commit crimes and dodge the authorities. This the why the legislation needs to be proactive in making new legislations and bringing up new rules to curb such nuisance creators. Being in the defence won't serve the purpose, only an active approach will help the law makers in getting rid of white-collar crime.

2. Educating the general public

The public at large have a very confined knowledge of white-collar crimes educating the masses about the potential criminal activities, by using different medias would help in curbing the menace.

3. Strict application of law

Not just formulation of laws but strict application of law is the actual deterrent in commission of crime. Serving a greater number of years and fine which is more than the gain which has been acquired by crime would act as a necessary deterrent.

4. Keeping the officers abreast

The law enforcement officers such as those working for enforcement directorate, central bureau of investigation should go through regular training modules to keep up with the criminals.

Strong regulatory policies

the regulatory bodies such SEBI, ED, CBI which work towards the white-collar crimes should gain requisite skills and keep up with the criminals, also central vigilance commission the apex government agency should play a proactive role in looking over the work of the top government agents.

(B) Organizational reforms

1. Diversification of powers

Too much power should not be given to an employee concentration of powers in hands of few people would lead to corruption. The organisation should keep checks and balances at each level so that people go through a consistent process of scrutiny and can't fathom to misuse the resources given to them.

2. Surveillance of employee activity

Employee activity should be regularly monitored in a legal way. Money laundering transactions should be identifying. Upon recognition about the surveillance system and the early warning system which are placed the illegal transactions would reduce a lot.

3. Internal audit

Internal auditors act as first line of defence against any corrupt practices which are happening in the company. Early detection by auditors would help the company and put a halt to acceleration of the problem in the future. Auditors should regular keep a check on the risk management, credit risks etc.

4. Creation of awareness

In recent times when most of the transactions are happening online It becomes the duty of the government and the organisation to educate the people and keep them abreast about the latest online frauds which are happening which will help them to protect themselves.

IX. CONCLUSION

The cost of white-collar crimes when compared to the traditional crimes is quite high, even the number of people impacted by white collar crime is unremarkable in proportion. Therefore, the attitude which law officials and common public have towards the white-collar crime should change. Eugene Soltes a Harvard professor who conducted extensive research into the minds of white-collar criminals found out that the criminals who indulge in white collar never analyse or think about the consequences or the victims of the crime. Analysing the paper, we can come to the conclusion that there needs to be a tremendous shift in the psyche when it comes to dealing with white collar crimes.
