

A Critical Study on White-Collar Crimes in India

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I. INTRODUCTION

White collar crimes occur in large and complex organizations. These offences are committed by people with sophisticated understanding of disciplines of finance, management, engineering, medicine, organizational theory, information technology etc.

The harm caused by white collar crimes is, in most cases, palpable. For example tax evasion lead to reduce revenue for the treasury, bribery lead to biased governmental decision making, inside trading lead to loss of investments in investors. There is moral complexity and uncertainty in white collar crimes which is not visible other offences. The identification of victims is very hard and victims are unaware of victimization.

It is common knowledge that certain profession offer lucrative opportunities for criminal acts and unethical practices which hardly attract public attentions; there have been crooks and unethical persons in business, various professions and even in public life. They tend to unscrupulous because of their neglect at school, home, other social institutions, their greediness, profit making mania, or want to reach on top by short cut. These deviants have scant regard for honesty and other ethical values. Therefore, they carry on their illegal activities with impunity without fear of loss of prestige or status. The crimes of this nature is called, “White Collar Crimes”. They are essentially an outcome of competitive economy of mid-twentieth century.

Today, a criminal considers the world as his field of operation. He commits especially in his own field, profession, business, trade and this kind of persons are not from any criminal background or with hardened arms and ammunitions, they do crimes through their privileged position,

The widespread political, social, economical and technological changes as well as variation in legislation, procedures and policies in different countries on mutual assistance in criminal matters have allowed this white collar white collar crime groups to become increasingly active in the international arena. These kind of criminal groups arena taking full advantage of globalization of world markets, dismantling of trade barriers, and the liberalized migration policies, high-tech communicated equipments and sophisticated electronic techniques to enhance their deviant activities.

White collar criminals are engaged in such felonious activities such as, fake employment placement rackets, black marketing, medical deviant activities, tax evasion, cyber crime, credit card fraud and procedure large profit and create the incentive to “legitimate” the ill-gotten gains through money laundering and many more.

What is white collar crime?

The terms “White Collar Crime “and its offshoot, “organized crime”, reflect a half-century old movement to remake the every definitions of crime. Professor Edwin Sutherland, a Sociologist who coined the term “White Collar Crime” disagreed with certain basic substantive and procedural principled of criminal law.

It is known to all that certain professions offer lucrative opportunities for criminal acts and unethical practices which hardly attract public attentions; there have been crooks and unethical persons in business, various professions, and even in public life. They tend to become unscrupulous because of their neglect at school, home and other social institutions where people get training for citizenship and character building. These deviants have scant regard for honesty and other ethical values. Therefore, they carry on their illegal activities with impunity without fear of loss of prestige or status. The crimes of this nature are called “ white collar crime”. And they are essentially or outcome of competitive economy of mid-twentieth century.

Industrial revolution ushered an era of plenty but simultaneously gave birth to many new problems. In the wake of industrialization a newer form of criminality was born which has now assumed menacing proportions. Unlike the traditional crimes, this newer form of criminality is associated with the upper and middle class people and is committed by them in course of their occupations. This adversely affecting the health and material welfare of the community as a whole and is also threatening the entire economic fabric of the state. The criminality in these

Classes are deep rooted and extends to such varied forms that it is difficult to describe all of them. They extend from smuggling to adulteration and from tax evasion to frauds and misappropriation, exhibited in numerous permutation and combinations. The common feature of all this criminality is that the same which is born out of greed, advance and rapacity; and committed in the course of trade, industry, commerce, business and profession of upper and middle classes. These crimes have adversely affected the social and economic fabric of the state and the community alike and have been planned development for the future a very difficult job. Sutherland has called these crimes, “white collar crime”, while Sayre has described them, “public welfare offences”, there are others who call these crimes “regulatory offences” and yet others “crime of strict liability”, while many others have called it as “socio-economic crimes also”. The genesis of socio-economic crimes/white collar crime has almost the same all throughout the world and it would be found that socio-economic criminality is in away the product of industrial revolution, although Renaissance and reformation also had contributed to the emergence of these crimes in no small measure. Renaissance had cast many a doubt on the very existence of the absolute or the Ultimate and in consequence the people became irreligious if not altogether atheists. The fear of Ultimate was increasingly abandoned in favour of lure of the material. The one emotion that seems to have unmistakably sobering effect on groups and individuals in this fear of ultimate, the fear of world beyond, the fear of what might happen to oneself, to one’s near and dear and the fear of consequences generally. The psychology, which kept and maintained the stress on purity, resistance to temptation and the pursuit of goodness, was increasingly abandoned in favour of money and material things. Money became to be an end and be all the entire human activity. In fact, money became an obsession with every individual. The high ethical codes and morale values were abandoned and thrown to winds in pursuit of money and all sorts of frauds, misappropriations, misrepresentations, corruption and adulteration came to be committed by the people in the course of their trade, commerce, industry and professions.

Crimes committed by the affluent in the course of normal business activities:

- Conspiracies – use position for gain
- Expanded by some to include a wider range of “middle-class” criminality and “high-tech” Crimes
- Legitimate business, deviant activity
- Internal vs. External judgments
- Secrecy
- Opportunity structures
- Institutional crimes

The theory of natural rights and laissez faire did not permit the state to interfere in the material pursuit of the individuals, associations or communities, with the result that socio-economic criminality multiplied beyond recognition and therefore, initially it had fallen on the shoulders of courts and judges to reshape the traditional criminal jurisprudence in the context of socio-economic crimes. It was only thereafter the state intervened and took some measures to regulate this newer form of criminality but the crisis of moral values and ethical codes had already set in and even the state’s belated intervention could not completely eradicate this malady.

Mahesh Chandra – material socio-economic crimes

Mahesh Chandra – published in 1979 (Delhi higher judicial service)

Versus Organized crime: organizational directed towards deviance

White-collar crime is not a classic, clear-cut case of deviance. It has one foot in conventionality and one foot in deviance.

Most of us hold the conception that “crime” is what street people of at least poor people do. Thus, there is a certain incongruity in seeing an affluent, 60 years-old banker in handcuffs and a prison uniform.

Some character about white collar crime:

- Deliberate acts motivated by profit
- Corporate Culture : Criminogenic: Differential Association
- Element of Learning, Peer support, Rationalization and Neutralization
- Victimization: Diffuse
- Lack of reporting and defining
- Civil vs. Criminal violations
- Sociological category
- Sanctions: small fine, big payoffs
- Investigation: Limited resources, problem of technology
- Activity hidden in normal business – secrecy (Medecal Doctors vs. Psychaitrists)

Most investigation is pro-active vs. reactive

For quite some time it had been even argued on the basis of the old maxim **nellum crimen sine lege** that these activities of people in trade, industry, business, profession and high places are not crimes at all, but the argument was not valid when it was advanced, much less now when states have one after another declared these activities. Fortunately, in the context of our country, our general penal code, the Indian Penal Code, 1860 was a step ahead in this behalf and had made them punishable and therefore in India such activities have always been treated as crimes and may be perhaps this also was the reason that these crimes did not emerge in India until very late.

White-Collar Crime Corporate Crime: Correlative Features:

White-collar crime tends to be made up of complex, sophisticated and relatively technical actions

White-collar crime tends to be intermingled with legitimate behavior

Victimization tends to be diffuse. Harm is not always conceptualized or identifiable as such because it is usually spread out over a substantial number of victims.

The monetary sums that are involved to be quite large i.e. Michael Milen, Ken Lay

- White-collar criminals steal by manipulating symbols rather than objects
- White collar crime occurs extends overtime

White collar crime is rarely prosecuted and rarely convicted. Penalties are light.

With respect to perception and prosecution, evidence indicating that they have taken place is not as clear-cut as with street crime.

Limited media coverage

Corporate criminals are not heavily stigmatized: they don't acquire "criminal identities"

Relative to their incidence, arrest are very rarely made.

White collar crime occupations encompasses wide range of financial, mercantile and professional activities, this study will concentrates on the world of finance and big business. Commercial and mercantile frauds such as false weights and measures, the adulteration of food stuffs, false advertising and trademarks, patent and copy right infringements are not germane to this study, though commercial abuses of credit and false accountancy are. Professional malfeasance by group such as doctors and lawyers is not included, but misdeeds by those professionals intimately connected with finance, such as accountants and stockbrokers, will be studied. Lastly, political corruption will be examined only where it interacts with the financial world, as in using privileged information to make profits on stock exchange. These other types of white collar crime are deserving of separate treatment, and it is to be hoped that this study of financial fraud will be stimulate such work. The seventies and eighties have witnessed an explosion of interest in white collar crime, with the dozens of books and scores of articles written on the topic.

Socio-economic crimes have come to be treated as crime of strict and absolute liability and as such relevance of mens rea or guilty mind has been curtailed to a great extent, if not altogether abandoned in the context of such crimes. Vicarious criminal liability, of the principal for the act of his agents, representatives and servants also being increasingly recognized to exist simultaneously, just as is the liability of the company for the acts of its directors and servants. It is common experience that the white collar criminals escape punishment primarily because of defective investigation and protracted prosecution and trial and therefore are thinking is needed on the investigation and trial of white collar crimes. Efforts have been made to throw some light on this aspect of the questions. Quite often it is suggested that special courts or tribunals should be created for the trial and punishment of white collar crimes but it is not so much the institutions which matter as the men who run these institutions. Creation of special courts or tribunals can be no guarantee that white collar crimes would be dealt with more efficaciously and promptly.

Criminal law is a vehicle of socio control and the success and failure of this vehicle is largely dependent upon not only the enforcement agency but also on the investigating and prosecution agencies. These agencies cannot function in water-tight compartments and their activities need a coordinated effort. While remaining independent and free from the influence operation of any criminal law and its agencies. It is not an easy task to secure such coordination; nonetheless ways and means are required to be devised to secure this coordination. The basis of the white collar criminality is the erosion of moral and ethical values through education is one of the ways to combat and control these crimes and it would be only through much measures and that interests of the posterity can be safeguarded.

EMERGENCE OF WHITE COLLAR CRIME:

As white collar crime is also known as socio-economic crime because it has direct effect on our society and our economy just as development in sciences, moral and social theories have ushered changes in the law of crimes, the restructuring of society, whether on account of new political thought or socio-economic imbalances,

has also materially affected criminal law. Variations in criminal law are not always the result of a single factor; quite often they may be the product of the cumulative effect of many new developments. The development in sciences coupled with new notions of morality and new theories of sociology may sometimes join hands to force a change in criminal law. Likewise these two may combine with the restructuring of society to effect alterations in law of crimes. The new philosophy of communism and a shift in the laissez faire have in no less measure been responsible for are thinking in criminal law. We have seen that of late the state activity has multiplied to a great extent. State is no longer a police state and is rather looked upon as a welfare state has contributed in large measure to increase in the state activity. It has opened new vistas for state activity. These changes have had their effect on the penal laws. Laissez faire economy has been increasingly yielding place to socialist economy and socialistic pattern of society has come to be accepted, tacitly or expressly, as the cherished goal of many countries. State in consequence is no longer a silent spectator to the happenings in and around it. The nefarious activities of many new categories of anti-social elements have also not gone unnoticed and altogether unchecked by the state.

More often than not, the state has risen to the occasion and in order to check these nefarious activities of the new anti-social element geared its administration of justice. During the course of the last one hundred years the concepts and elements of criminal law have undergone considerable change; while on the one hand new offences have come to the forefront, new notions of criminal responsibility also have come to be recognized almost all the world over. This was not a sudden development or reaction; rather it was the culmination of the changes in the structure of the human society undergone and affected over a period extending over centuries which it would be proper to consider here.

In the middle ages of the society had a feudal structure in which the king and the feudal lords and chiefs were the centers of gravity and were considered to be the fountain of justice and their word was law. The administration of justice was more often to suit their convenience and their notions of justice were by and large personal. Towards the end of middle ages many changes started appearing almost all the world over and particularly in Europe and England. An age of reason began and over a period culminated into a new era commonly known as Renaissance. Renaissance not only ushered in an age of reason but rather also infused a sense of a scientific thinking amongst the people. The people started questioning every phenomenon of life and society. A spirit of inquiry led to the growth of science and the desire to “know the unknown” resulted in new prevention and discoveries which extended man’s knowledge about the world. Nation states began to appear in Europe, with distinct territories and boundaries which formed well defined units. Though a spirit of healthy competition between nation states grew and a strong feeling of nationalism developed, in course of time this nationalism led to an open challenge to the theory of Divine Rights of Kings and consequently laid the foundations of new political thoughts, this came to be known as the reformation. It also affected the faith of people in supreme power.

During the 18th century there began another series of changes which revolutionized the technique and organization of production. These developments resulted in the rise of a new type of economy the industrial economy. The “domestic system” under which the artisans and craftsmen worked in their homes gave way to factory system. Many new mechanical inventions and chemical discoveries were effected which had far reaching consequences, particularly in the industrial and commercial fields in all the European countries including England. This was the beginning of an era which culminated in what is now termed as the Industrial Revolution. Large scale factory system came into vogue which brought as its accompaniment a shift from the villages to the cities, primarily because these factories were located in big towns and cities in view of the facilities of transportation and marketing the large scale production of the factories. This disturbed the entire social fabric and not only a new urban society came into being, new social groups in this urban society also sprang up. There arose an altogether new social groups in this urban society also sprang up. There arose an altogether new social structure which gave birth to a challenge to the accepted moral and social beliefs. This industrial revolution saw the decline of home handicraft, led to the growth of urbanization, resulted in the expropriation of many farmers, rise of factory towns in the new industrial centers and a phenomenal increase in the production of commodities.

CONCEPT OF WHITE COLLAR CRIME:

Use of the term “White collar crime” to refer to some category of illegal or a least deviant, conduct is now a common feature of our linguistic landscape. Sociologists and Criminologists, though disagreeing among themselves about exactly what the term means, have been talking about white collar crime for more than sixty years. The majority of American law schools have a course in the subject. Journalists and politicians refer to it regularly. Law enforcement agencies, prosecutors and defense attorney all claim expertise in the area. And the term is increasingly being used outside the United States, both in English and in translation. Yet, despite its currency in the academic, professional and popular culture, the term “white collar crime” occurs only rarely in a

substantive criminal law. The term appears in only a handful of relatively obscure criminal statutes and the question whether an offense should be considered a white collar crime is one that has arisen in even fewer cases.

It must be emphatically stated that white collar criminality thrives because of public apathy to it. The reason for this public insensibility is that first such criminals operate within the strict letter of the law and exploit the credibility of their victims; and secondly, the legal battles involved are dragged out for years in the courts, with the result the gravity of the offence is completely lost in the oblivion. That part, the impact of white collar crime is so much diffused in the community that the individual victims are only marginally affected by it and therefore they conveniently forget all about it.

This is yet another important point in context of white collar crime. At times, the members of the community themselves contribute to the commission of various white collar crimes willingly or unwillingly. For instance, illegal gratification to public servants to get the work done quickly, black marketing in times of scarcity, evasive price violation, rent ceiling violations etc are some of the common examples where 'victims' of the crime are themselves to be blamed for involvement in the white collar criminality. In fact, such crimes cannot be committed unless there is a demand for illegal favour from consumers and they are actively involved in the deal. In any event, given the tortuous definitional history of white collar crime in the social sciences, it is somewhat surprising that legal academics have extended relatively little effort in defining white collar crime or explaining the criteria upon which specific offenses are included in a given curriculum. Most of the textbooks and law review literature deal with the definitional question only briefly and some not at all. Rather, there seems to be an assumption that the subject matter of white collar criminal law can be defined simply by reference to the offenses that are actually covered in a given course or casebook. If one was starting from scratch, 'white collar crime' is hardly the term one would choose to describe the concept we have been dealing with here. The term was vague and imprecise when first conceived, and same even more so today. Frequently, it means exactly the opposite of what it says, as when it is used to refer to merely deviant, to no criminalized activity. Sometimes it has been used over inclusively such as when it refers to RICO, conspiracy and corporate homicide.

White Collar Crime is a number of miscellaneous nonviolent crimes lumped together as white-collar crimes. There is no fixed definition of white collar crime, although it usually includes bribery, embezzlement, fraud, forgery and violations of trust committed by corporations or individuals engaged in commerce. Historically, in the U.S. many white collar crimes have received lenient punishment from a criminal justice system that considered white collar crimes to be less serious than more violent crimes. Today, the trend is for stricter punishment of white-collar crimes in recognition of the financial damage they inflict on society.

Criticism of Sutherland's views on white collar crime

Sutherland's definition of white collar crime has evoked criticism from certain quarters. Coleman and Moynihan pointed out that the lack of definite criteria for determining who are 'persons of responsibility and status' has made Sutherland's definition of white collar crime the most controversial. It seems likely that what Sutherland meant by this is absence from conviction for crimes other than white collar crimes. The element of 'high social status' as used in the definition also leads to confusion; clearly it has far narrower meaning than is given to that term in everyday usage. Sutherland himself did not stick to this meaning and including thefts and frauds committed by middle or even lower middle class workers in course of their employment or work. Some critics have suggested that such crimes should have been called as 'occupational crimes' instead of being termed as 'white collar crime'. It is further argued that in fact the important element in the definition of white collar crime is not the socio economic status of the individual, but rather the type of crime and the circumstances of its commission. These usually include pilfering, false accounting, bribery embezzlement etc. Sutherland however, justifies the special procedure of trial for white collar criminal by administrative agencies on the ground that it would protect the offender from the stigma of criminal prosecution.

Yet another objection against the definition of white collar crime is that it does not necessarily require mens rea which is an essential ingredient of a crime. The doctrine of mens rea based on common law has no application to statutory offences in India and the requirement of guilty mind may be excluded either by expressly or by implication in such cases.

Contributing Factors:

There are some factors or causes, which are responsible for occurrence of white collar crime; some are economical, social and political responsible for white collar crime. The other problem is globalization and liberalization is also mainly responsible for white collar crime. Some of them are as under:

The changing socio-economic scenario of the society coupled with increase in wealth and prosperity has furnished opportunities for such crimes.

Of all the factors the economic and industrial growth throughout the world has perhaps been the most potential cause of increase in white-collar crimes in recent years.

Commenting on the growing incidence of white collar crime in India, the Law commission in its 29th Report observed that modern scientific and technological developments and monopolistic trends in business world have led to enormous increase in white collar crimes.

The post-independence period in India ushered an era of welfare activities which necessitated regulatory measure on the part of government to control means of production and distribution so as to sub serves the common good. The contravention of such regulatory measures generally gives rise to white collar criminality.

Marshal B. Clinard asserted that the problem of white collar criminality has its root in competitive business community, which tires to oust their rival competitors in order to, earn huge profits. Sometimes such crimes may also be committed merely for the sake of retaining existence in the competitive business. To illustrate, though there is a prescribed code of ethics for the practicing lawyers but since the very nature of their profession involves the spirit of combat and competition, they often resort unlawful tactics such as concealment or misrepresentation of facts, which if detected, is punishable under the law.

To take another example, the private educational institutions in India, which receive public-aid or grants, furnish false account simply for the sake of retaining their existence.

Likewise, the members of industrial and business class who enjoy high status in the society have a tendency to suppress their real profits by furnishing false and fabricated accounts of their income and property in order to claim tax exemption or avoid payment of heavy taxes.

One more reason for the multiplicity of white-collar crime is relatively high socio-economic status of white-collar criminals. They belong to an influential group, which is powerful enough to handle their occupation tactfully, and person affected thereby hardly know that they are being victimized. Moreover, the public in general is also somewhat apathetic to such crimes thus causing obstruction in prosecution and punishment of white-collar criminals.

It is often alleged that criminal law administrators and Judges being members of upper strata of the society, are generally sympathetic toward white-collar criminal while dealing with them. But there seems no jurisdiction in this assertion. If this allegation is based on the large number of acquittals of white Judges for those criminals, it may be pointed out that it is not because of demarcation between criminality and immorality involved in white collar crimes.

At lease, the recent developments in information technology, particularly during the closing years of the 20th century, have added new dimensions to white-collar criminality. There has been unprecedented growth of new variety of computer dominated white collar crimes, which are commonly called as cyber crimes. These crimes have become a matter of global concern and a challenge for the law enforcement agencies in the new millennium. Because of the specific nature of these crimes, they can be committed anonymously and far away from the victim without physical presence. Further, cyber criminals have a major advantage: they can use computer technology to inflict damage without risk of being apprehended or caught. It has been predicted that there would be simultaneous increase in cyber crimes with the increase in new internet web sites. The areas affected by cyber crimes are banking and financial institutions, energy and telecommunication services, transportation, business etc.

II. CONCLUSION

The indirect effects of white-collar crime that transforms all over India into victims, need to be emphasized in order to encourage greater public mobilization aimed at influencing government thinking on these less visible, 'victimless' forms of criminality. In this the media, who play a role in defining and therefore molding the crime problem, can influence public opinion on white-collar crime. While some believe that white-collar crimes in general receive little or not attention in the news because the media is owned by big business, the relative neglect of reporting on business crime should rather be explained by the invisible nature of the crime and the difficulty in presenting it in the human terms common to the mass media and its audiences, than by any elite conspiracy to suppress it.

The media is challenged to play an important role in raising public awareness of this issue by, for instance, pointing out the increasing costs due to white collar crimes, which remain hidden in the extra prices of goods and services passed onto the consumer, and challenging the public at large to take preventive steps. While conventional wisdom suggests that the public is indifferent to white collar crime and may even sympathize with the offenders when they are caught, it is argued that more knowledge about such crimes and their harmful consequences will lead to their condemnation. It is true that many Indian citizens do not realize that they are victimized by price-fixing or restraint of trade and under these circumstances the public can hardly be expected to react to such behavior. Opinion polls abroad, however, indicate a great deal of resentment about crimes perpetrated by those in positions of trust and responsibility, with strong condemnation of organizationally deviant actions, especially when the behavior causes illness, injury or death.

Example of how the general public may be affected by white –collar crime include, for instance, insurance premium rising significantly due to false claims made against the insurer. An individual may have an exemplary claims record, but premiums are based on overall claims of which a large percentage may be fraudulent. These are the issues around which the public can mobilize as they become increasingly aware of how white-collar crimes threaten their lifestyles.

Future control trends for white-collar crime thus point towards increasing the visibility of fraudulent activities, raising the consciousness of those not party to such actions, of the existence and incidence of fraud, employing internal controls and self-regulation within institutions, enhancing inter-agency co-operation both domestically and abroad, and improving the capacity of policing agencies and the courts to cope with investigation and trials. While presentations in South Africa and abroad suggest that fraud is something to be managed and limited, rather than eradicated altogether, should the incidence of fraud reach unacceptable levels before anything radical is done to prevent it- which may indeed already be the case in Indian may action taken may prove to, be too little, too late.

END NOTES

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