



WHITE COLLAR CRIMES IN INDIA- AN ANALYSIS

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Abstract

This article will analyze a critical study on ‘white collar crimes in India’. It will make an effort to understand the concept of white collar crimes and its features. White collar crime means a crime that is committed by educated person in business which usually involves a form of financial theft or fraud. They can also be termed as crime of educated and professional elites since they are non-violent and done through deceptive activities. In this paper, the author has examined about types of white collar crimes recognized in India in last few years and also what differentiates white collar crimes from the blue or ordinary crimes. Besides this, it will also state the factors of growth of white collar crimes and analyze the biggest scams that occurred in India till date. The paper will also discuss various legislations of Indian laws which addresses about the punishment of these types of crimes. The author will finally conclude the article with its own recommendations and suggestions to combat the situation.

Introduction

The term ‘white collar crime’ was coined by Edwin Sutherland in the year 1939. Back then, he labeled these crimes for apparent lack of a better name, ‘white collar crimes’ and soon, born a term that would be used to become an established part of the indigenous of criminology. Sutherland defined ‘white collar crime’ as a crime committed by a person of high social status and respectability in the course of his occupation. And the concept of White Collar Crimes found its place in criminology for the first time in 1941 In India, white collar crimes were first discussed by the Santhanam Committee which was appointed in 1962 by the Government. This committee was formed to review the problems of corruption and to propose suggestions to ensure speedy trial in cases of corruption, bribery etc. The committee adhered great emphasis to the emergence of the concept of ‘white collar crimes’. Later on, Law Commission in its 29th report on proposal to add on certain socio-economic offences used the term ‘white collar crimes’ in the Indian Penal Code. It stated that, ‘White collar crime may be defined approximately as a crime committed by a person of respectability and high social status in the course of his occupation’. Crime is not static, it is analogous. With the progress of civilization in various walks of life, newer crimes have come into vogue. With the growth of industrialization and urbanization on its peak, another form of atrocity known as ‘white collar crime’ has come into being. These are associated with the production and distribution of economic wealth and emergence of ‘mass society’. Some of the common characteristics of white collar crimes include: Non-violent, Deception, Intent, Grand jury, Multiple defendants, Corporations and Parallel proceedings.

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Types of White Collar Crimes in India

Bank fraud- Bank fraud are generally committed to avail credit facility by issuing of cheque, security deposits, assets and submission of document. Banking sector is highly affected by the corporate criminals as we have seen many well established firm and business person were involved in bank fraud and this corporate white collar crime is concerned with people at large as well as the govt. and financial health of the country. To deal with such emerging trend of bank fraud in India government has enacted companies act 2013 under which section 447 prescribed three times the amount of bank fraud as well as imprisonment from 6 month to ten year².

Bribery – Bribery is a unethical and illegal practice done at every level of work it means giving money to any public official in return of his favor, the people at high position take the favor for any public officer and direct them to do something or not do something. It is not necessary that bribe must include monetary incentives, it can be any good, rights, preference, and freedom etc. this is one of the common source or earning in money government department.

Cybercrime – Cybercrime include the issues related to patent, privacy, copyright, child pornography, hacking and cyber terrorism, we have seen the recent technological development in computers and networking because of nation's security, privacy and financial involvement. Now a day everyone is using mobile phone and connected to any network, in this type of crime it may affect person's physical health as well as mental health, directly or indirectly. The crime against women and cyber threat is also rising; due to advancement of technology the cyber expert may get access to victim's photos, videos, messages and telephonic conversation.

Money laundering - Money laundering is crime in which the criminals obtain money from any illegal means and then convert it to legitimate money, the criminals deposits the whole illegal or black money into the bank through financial institution or any other firm and then by showing constant or various transaction from that money he tries to hide the real identity of money. Money laundering is generally done for tax evasion, hiding the source of money, in money laundering fund is provides to illegal organization and terrorist activities by three steps placement, layering and integration, it does not only threaten financial stability of a country but it also threaten the security and peace of nation

White Collar Crime and Blue Collar Crime: Differentiation

White Collar Crime –White collar crime are generally committed at higher level by people belonging to high social Status and government officials, this crime is motivated for financial gains in his transaction or routine business. It include money laundering, bribery, fraud and cyber crime, in this crime the criminal is well educated, expert in his field and financially

² Khan, A. (2013).White Collar Crime-Study of Emerging India.2013.M.D University.



stable, they have strong backup and political relation and millions of dollars in their bank account they can easily pay the penalty imposed by court so sometimes it becomes very difficult to put them behind the bars.³

Blue Collar Crime – Blue collar crimes associate with people belonging to lower class society; they commit crime for their basic needs, self-satisfaction, and some financial need or under the pressure of any other person. The crimes are generally related with theft, murder, rape, armed robbery, assault and drug abuse. The criminal under blue collar don't have other opportunities and strong financial backup plan many times they for any illegal organization to fulfill their financial needs, they don't even have idea what is the consequences of the act and don't even know from whom they are working, they are not highly intelligent and successful person like white collar criminals.

Types of White Collar Crime In India

- Bank Fraud
- Blackmail
- Bribery
- Cellular Phone fraud
- Computer fraud
- Counterfeiting
- Credit Card Funds and Currency Schemes
- Embezzlement and Environmental Schemes
- Extortion
- Forgery
- Insider Trading
- Kickback
- Larceny
- Tax Evasion
- Welfare Fraud

³ The Queen v. Birmingham and Gloucester Rly. Co, (1842) 3 Q.B. 223.



Factors of Growth of White collar crimes in India

- Financial or physical duress
- The increase is due to a booming economy and technological advancement
- The emergence of cutting edge technology, burgeoning business and political pressures
- It is usually hard to detect as they are always committed in privacy and they have no eye witness.
- These cases are hard to track and investigate and make law enforcements reluctant.
- Less police efforts and too lenient laws.

Famous White collar scams in India

Harshad Mehta scam⁴ - In 1984 Harshad Mehta started a company “Grow more research and assets management company” and became broker of Bombay stock exchange. Harshad Mehta scam was considered as one of the biggest scam in Indian share market, he uses ready forward deal when govt. issue security to generate loan from various bank, Harshad Mehta became a agent between banks and govt. whenever govt. need financial help to fulfill expenditure, the government issue security to the bank and it was mandatory from the banks to buy govt. security, but the banks issue cheque in the name of Harshad Mehta and he uses that amount to manipulate stock market by creating an unnatural pumping in the stock market, he was considered as one of the successful investor and known as bull of stock market. Sucheta dalal exposed his scam by publishing article in Times of India in 1992. Harshad Mehta earned almost 5000 crore from his scam and investors has lost million of rupees in a day from the abnormal hike in stock market.

B. Ramalingamraju scam⁵ - This scam came out when founder chairman of Satyam computers confessed with times of India that he has manipulated the account statement of company, the books of account was overstating assets and profit of company. Investor started investing in his company and Satyam computers was known as fastest growing company and also won several awards due to his extraordinary performance but in reality the company is not growing as faster as it was stated in financial statement. B. Ramalingamraju used the investor’s amount in real state. He has opened many paper companies to buy property from the name of their different directors, Ramalingam faces problem and his scam came out when recession period of real state came in 2008.

⁴ CBI (Central Bureau of Investigation), India. Retrieved 22 May 2018.

⁵ The Times of India. 7 January 2009. Retrieved 20 October 2013.



Punjab national bank fraud⁶ – Nirav modi who was India's 85th richest man was involved in diamond business, his scam was one of the biggest scam in Indian banking sector. Two other officials from bank were also involved in his scam, they fraudulently issue Letter of undertaking when Nirav modi needs credit from overseas bank. The LOU's were transmitted through SWIFT messaging system of banks where credit facility is provided to said firms but the bank official of PNB has not follow the due process of bank, the amount which was given to Nirav modi firms was not actually used for buying diamonds and PNB losses 11,356.84 crore from Nirav modi scam.

Freedom 251 Smartphone scam⁷ - In 2016 the owners of ringing bells publish advertisement that he is offering Smartphone at just rupees 251 and the smart phone will be delivered in next 6 month. This was the processed plan of the owners but people were excited to buy smart phone at rupees 251 as it was India's cheapest smart phone. The owner of freedom 251 generated 145 crore from the customer and then deposited in banks, they have utilized the amount and collected 6.5 crore interest and later returned the sales amount to their customer⁸.

Features of White Collar Crimes

Non violent crime – This type of crime does not directly affect any person physically as it does not include the crimes like murder, rape etc. they are non violent offences committed by the people to high social status class.

Deception – It means an act of deceiving someone and obtains any property, money, advantage or right to do something. It's an act when someone wrongfully believe or accept something which is wrong or illegal, deception shows the clear and cut mind set of criminals in white collar cases.

Intention – There are mainly 2 essential requirement of crime actus reus and mens rea, actus reus means a wrongful act and mens rea means intention and knowledge of the act. In the court the prosecutor has to prove defendant's act wrongful as well his wrongful intention, the intention of defendant is one of the biggest defense in the court and sometimes it becomes very harder for prosecutor to show and prove the intention of criminal and the white collar cases related to fraud, money laundering, forgery, cyber crime it is very easy to establish burden of proof as the act of accused clearly shows his intention.

Grand jury – In criminal investigation of white collar cases, the prosecutor's may take advantage of grand jury by issuing subpoena to produce any related document, person, officials or witness which is very rare in cases other than white collar crimes. The investigation in white

⁶ The Economic Times. 28 March 2018. Retrieved 1 June 2018.

⁷ The Times of India. Retrieved 2016-10-15.

⁸ Report on White-collar Crimes' by International Monetary Fund.



collar cases may take months or years as it involve very technical fraud and people belonging to higher class.

Corporation involvement – In white collar crimes many companies and organization are involved, they are either directly or indirectly affected whenever a high class person commits any white collar crime.

Parallel proceeding –In white collar crimes the criminal is charged with civil as well criminal laws, for example whenever a person commit money laundering he will be charged under prevention of money laundering act,2002 a well as section 120 B of IPC,1860⁹

White collar crime and existing legal framework

After analyzing the generic features of white collar crimes, the next step is to study the legal provisions dealing with white collar crimes. White collar crimes are developing so rapidly that it is quite arduous to provide a firm setting of its understanding. There are different kinds of white collar crimes like corruption, insider trading, cartel offences, criminal breach of trust, black marketing and profiteering etc. White collar crimes are pervasive in almost all the professions and occupations in our society. In this growing era of technology and economy, newer opportunities for committing white collar crimes crop up. However, an attempt is made to categorize various white collar crimes and enlist various statutes with criminal sanctions that can be revamped in case of violation¹⁰.

Liability of White Collar Crimes

White collar crime is not a unitary concept. Statutes focused at regulating white collar crime often provide alternative sanctions. The aim of these sanctions is to control the activities relating to white collar crimes. In India, white collar crimes are regulated by Indian Penal Code, 1860. Below, are the different contexts in which a white collar crime “act” can be made liable.

Civil Liability

The acts labeled which are done in the course of occupation. This is applicable when the matters are of manner of business or occupation. In case of violation, civil rules are applicable. The adjudicating authority has the same powers of that of civil courts. These authorities’ posses’ unique skills and knowledge required for recognition of technical complexity of the Act. These are non-punitive in nature, require a lower standard of proof and have less procedural safeguards.

Criminal Liability

⁹ Ratanlal & Dhirajlal, ‘The Indian Penal Code’, 30th edition 2006, Wadhwa

¹⁰ Conference report on white collar crimes’, by Godwin Kunda.



The statute also provides for imposition for criminal liability. The purpose of providing for criminal sanctions is to add dimensions to the full regimen available by giving the enforcement agencies one more tool and white collar is also a crime against society. A criminal prosecution requires high standard of proof and is punitive in nature.

Others

The statute also provides for a kind of proceedings which can be proposed in case of some white collar crimes is 'disciplinary' proceedings. The term 'disciplinary proceedings' is not defined under any legislation or rules. It means an action initiated to find whether an employee has violated a prescribed or implicit code of ethical and professional conduct to enable the employer to impose penalties on the guilty.¹¹

Offences under Indian Penal Code, 1860

Indian Penal Code is a substantive criminal law code, in which proceedings are criminal in nature. Indian Penal Code, 1860 does not provide punishment for all white collar crimes. However, there are provisions which are conjured for penalizing white collar crimes. They are discussed below.

Dishonest Misappropriation of Property

The Indian Penal Code, 1860 provides criminal liability for criminal misappropriation of property. It is regarded as white collar crime since it is done with the intention to defraud the person. In order to establish the offence, the necessary ingredients are that the property must be movable, it should belong to a person other than the accused; the accused should wrongly appropriate or convert such property to his own use; and there should be dishonest intention on the part of the accused. A person who is liable for dishonest misappropriation of property shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.¹²

Criminal Breach of Trust

It is the most profound type of white collar crime. In order to establish the offence of criminal breach of trust under the Indian Penal Code, 1860 the necessary ingredients are that the accused must be entrusted with some property or with any dominion over property; he must dishonestly misappropriate or convert to his own use that property or willfully suffer any other person to do so; the use must be in violation of any direction of law prescribing the mode in which such trust is to be discharged or of any legal contract, that has been entrusted to him. A person who is liable for dishonest misappropriation of property shall be punished with

¹¹ Mishra R., *Criminal Psychology*, Sunit Enterprises, 2006

¹² Section 45 of the Prevention of Money Laundering Act, 2002



imprisonment of either description for a term which may extend to three years, or with fine, or with both.

Cheating

In order to make a person liable for cheating under the Indian Penal Code, 1860 the necessary ingredients are deception of a person either by making a false or misleading representation or by other actions or omissions; fraudulent or dishonest inducement of that person to either deliver any property or to consent to the retention thereof or to intentionally induce that person to do or omit to do anything which he would not do or omit if he were not so deceived; the act or commission causes or is likely to cause damage or harm to the person induced in body, mind, reputation or property. A dishonest concealment of facts is a deception within the meaning of this Section. Whoever cheats shall be punished with imprisonment of either description for a term which may extend to one year or with fine or both.¹³

Forgery

The essence of forgery is making false document. In order to make a person liable for forgery under the Indian Penal Code, 1860 the ingredients are firstly, making of a false document; secondly, the intention of making such document is (i) to cause damage or injury to (a) the public or (b) any person or (ii) to support any claim or title or (iii) to cause any person to part with property or (iv) to cause any person to enter into any express or implied contract or (v) to commit fraud. A person who commits forgery shall be punished with imprisonment of either description which may extend to two years or with fine or with both¹⁴.

Criminal Conspiracy

Conspiracy is an “inchoate” offence i.e. it is the crime of preparing for or seeking to commit another crime without the need for actual harm to have been done. The gist of the offence lies not in doing the act or affecting the purpose for which conspiracy is formed, nor in attempting to do them, nor in inciting others to do them, but in the forming of the scheme or agreement between the parties.

Offences under Companies Act, 2013

It provides the statutory code for the structure for the company, its governance and rules. A company is clustered of persons. Companies are regulated by both Companies Act, 2013 as well as its predecessor that is Companies Act, 1956, since all sections have not been notified. The new Act was passed in the backdrop of Satyam scam which is the biggest corporate scam in India so far. The Act of 2013 for the first time has recognized ‘fraud’ as an offence in itself and has

¹³ Williams Frank. P., ‘Criminology Theory’, Andersen Publication.

¹⁴ Ratanlal & Dhirajlal, ‘The Indian Penal Code’, 30th edition 2006, Wadhwa



provided punishment for it. Fraud can be committed by persons like directors, promoters, key managerial persons, or any other officer of the company. The word ‘fraud’ has been given a wide meaning under the Act. It includes any act, omission, concealment of fact or abuse of position to deceive, gain undue advantage from, or injures the interests of the company or its shareholders or its creditors or any other person, whether or not there is any wrongful gain or wrongful loss and includes corrupt practices, deceit, conflict of interest and bribery.

A company is formed for lawful purpose. Whenever it is found that the business of the company is being carried on for a fraudulent or unlawful purpose then every officer of the company who is in default shall be liable for fraud.

Recommendations and Suggestions

- A specialized agency should be entrenched to deal with investigation and prosecution of white collar crimes
- Special Courts must be set up to adjudicate cases, to ensure speedy trials of such crime.
- A Sentencing Commission should be established to frame persuasive guidelines
- forsentencing and bring consistency and uniformity in procedure of sentencing in India.
- A well documented Single Unified Code should be enacted to deal with white collar crimes to bring uniform statues instead of sector-based statues in India.
- Fraud should be legislated as an offence under Indian Penal Code, 1860.
- Legislative amendments should be framed to build up punishments for white collar crimes
- The present provisions relating to forfeiture of property should be amended so as to decline the cases of these crimes.
- There shall be specialized in-service training based on latest techniques for investigation of white collar crimes
- The Whistleblowers Protection Act, 2011 should be amended to improve the existing shortcomings.
- The existing procedure for investigation and prosecution of white collar crimes should be redesigned to combat with shortcomings related to white collar crimes.
- There is no proper definition of white collar crimes in India. These socio-economic crimes should not be taken lightly by the government.



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- People who don't know about these crimes should be made aware through communication medium.

Conclusion

It is evident that, due to advancement of science and technology, contemporary form of criminality known as white collar crime has arisen. The white collar crimes is the blight of most developing countries especially India. It is leading cause of under-development with its corollary effects of poverty and starvation. It flourishes on bad governance and leadership and can be solved the best at ground level. If at the ground level, everyone at particular business or company would keep an eye out of anything suspicious that alone would detour potential thieves. The quick fix to this problem will come from the people who are most affected by it. It will not only affect the financial status of a person but it will also have a negative impact on the society. The term 'white collar-crimes' has not been defined in the code but its dimensions are so widely evident in the Indian Penal Code, 1860 with crimes such as bribery, forgery and criminal breach of trust etc. It is being analyzed that Code doesn't fulfill the needs of the present day since the nation is dominated by all major crimes consisting of offences against person, property or state. However, the code doesn't deal in any satisfactory manner and punishment prescribed under Indian Penal Code, 1860 are proving to be inadequate. The special acts dealing with 'white collar crimes' and the provisions of Indian Penal Code should be harmoniously interpreted to control the shortcoming of 'white-collar crimes'. The provisions of Indian Penal Code dealing with white-collar crimes shall be amended to strengthen punishment particularly fine with respect to socio-economic conditions. Besides, if these crimes continue at this present rate, they will definitely be out of control before we recognize it.
