WHITE COLLAR CRIMES IN INDIA

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ABSTRACT

This paper provides a detailed understanding behind the motives of people committing crimes. Researchers have named “the people committing crime, where the crimes were minimal and confined to a particular area of administration” as Grass Eaters. People involved in white collar crimes and which has spread in almost all fields of business are termed as Meat Eaters. With the advent of technology and growth of education, white collar crimes are on the rise, being protected by professionals finding loopholes in the judiciary and support from the government indirectly.

This has created a nexus where people from almost all walks of life have started forming group to do white collar crimes and being protected by professionals in law. This has lead to a situation where the small timers have become white collar criminals. Talking about the prevalence of white collar crimes in India, they are spreading like a rapid fire in every sphere of society. Though corruption, one of the species of white collar crimes, has been the most talked about issue in all spheres-social, economic and political, not much stringent steps/actions have been taken to curb this menace. Therefore the concern of this paper is to define white collar crime, study its historical development and formulate tentative solutions for eradicating the problem.

KEYWORDS: white collar crime, judiciary, government, eradication, education.

INTRODUCTION

This thought evolved with the Criminologist and Sociologist Edwin H. Sutherland, in the year 1939, who popularised the term ‘white collar crimes’ by defining such a crime as one “committed by a person of respectability and high social status in the course of his occupation.” Sutherland also included crimes committed by corporations and other legal entities within his definition. Sutherland’s study of white collar crime was prompted by the view that criminology had incorrectly focused on social and economic determinants of crime, such as family background and level of wealth. It is true to the common knowledge that there are certain professions which offer lucrative opportunities for criminal acts and unethical practises which is very often overlooked by the general mass of the society. There have been crooks and unethical persons in business, various other professions, who tend to become unscrupulous because of no reason apart from the thirst of gaining more and more for themselves. These deviants have least regard for ethical and moral human values. Therefore,
they carry on their illegal activities with impunity without the fear of loss of respect and prestige. These crimes are of the nature of ‘white collar crimes’ which is the essential outcome of the development of the competent economy of the twenty-first century.

CHRONOLOGICAL MILIEU OF THE EMERGENCE OF WHITE COLLAR CRIMES

The earliest documented case of white-collar crime law dates back to 15th century England. There has been a case popularly known as the Carrier’s case of 1473, where the agent was entrusted to transport wool and he attempted to steal some of it for himself. Therefore the Star Chamber and Exchequer Chamber of the English Court of Law adopted the ‘breaking bulk’ doctrine as it constituted the crime of larceny. However, the growth of industrial capitalism in the eighteenth century ushered a new history of crime and criminality. The very base of industrial capitalism is based on coercion and robbery. Now, before we discuss the topic let us understand the meaning of capitalism

The process of emergence of these conditioned was termed by Karl Marx as ‘primitive accumulation’ while in the words of Adam Smith, it was ‘previous accumulation.’ Therefore, the Dutch Marxist, William Bonger contended that criminal attitude develops among the working class under capitalism due to conditions of misery and at the same time the criminal attitude develops among the bourgeoisie from the avarice fostered when capitalism strives. It succeeded in United States of America in 1890, when Congress passed the Sherman Antitrust Act which took the initiative to make the monopolistic trade illegal. Other industrialized countries like Great Britain had a history of penalties involving white-collar crime by that time, but it was not as sweeping as the Sherman Act. Some nations implemented a smattering of these laws, known as competition or antitrust law, but did not have a strong binding force for a long time. But more anti-white-collar crime sentiment rose in the late 19th century and early 20th century in the United States as a result of a group of journalists known as muckrakers. They laid much focus on the prevalent stock fraud, insurance fraud and underhanded practices of monopolistic companies that had grabbed under the Sherman Act. The muckrakers’ exposes gave rise to public resentment and thereby called for some reform. By 1914, Congress attempted to solidify and strengthen the sentiment laid down by the Sherman Act, which was used against labour unions, with the Clayton Antitrust Act. This Act was much stricter and went much further than the Sherman Act in making particular monopolistic practices illegal.

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The street crime, especially snatching and motor vehicle theft, relatively down compared to 2010, the year 2011 truly belonged to the faceless white-collar criminals. The numbers of such criminals arrested by the crime branch this year saw a massive increase — 108 per cent — as 148 people were arrested for dabbling in white-collar crime as opposed to just 71 in 2010. “In all, around 20 organised white-collar rackets were busted last year and cash and valuables, amounting to Rs.4.5 crore, thousands of mobile phones used in the commission of criminal activity and three dozen vehicles were recovered,” said a senior police officer. The list includes perpetrators of lottery fraud, fake recruitment racketeers, ATM fraudsters, travel agents, property dealers, agents promising fake court affidavits and death certificates as well as both men and women operating fake friendship clubs. Meanwhile, the Economic Offences Wing (EoW) of the Delhi Police arrested more than 163
criminals in 1,358 cases ranging from those of land grabbing to fake job rackets and attached property valued at amounts estimated to be between Rs. 350 to Rs. 500 crore. “This year, we focused more on individual cases as opposed to those in which several persons were victimised. We got more manpower,” said Vivek Gogia, joint CP (EoW).

White collar crimes are to be considered as a global phenomenon to which India is no exception. As discussed earlier, white collar crimes emerged in India with the advent of the British colonisation during the period of industrial capitalism. Prior to that, instances of men working with the District treasury embezzling with the money kept under his safe custody or bribing practiced among the officials were found. Therefore, the white collar crimes were confined to this limit. Thus, the people indulging in the white collar crimes then can to said to be mere ‘grass eaters’ the people in the modern times have reached the stage of ‘meat-eaters’.

WHITE COLLAR - LEGAL PROFESSION

The white collar crimes became a phenomenon to be reckoned with industrial revolution. Modern industrial capitalist economy which evolved with time became complex in nature as it developed a growing commercial nexus among insurance, banking, stocks and related corporate matters. This in turn, gave rise to critical legal intricacies relating to property rights and other legal matters which paved the way for the birth of a new class of professionals of advocates who in the name of providing justice started abetting in the wrong and thereby pursued their own narrow interest. A large number of advocates evolved, who forget the pious oath of serving the society and started looking for the legal loopholes and concentrated mainly in helping out the rich entrepreneurs to grow richer. They made extensive study to try out ways for maximum tax evasion for these rich corporate personalities as well as for themselves. The white collar crimes committed by these legal practitioners only confines in sorting out illegal methods of tax-evasion. There are very frequent instances of unscrupulous and unethical practices like that of fabricating false evidence, engaging professional witnesses, thereby violating ethical standards of legal profession and dilatory tactics in collusion with the ministerial staff of the courts.

The instances of white collar crimes committed in the Indian society by the lawyers, there lie the shameful illustrations of Magistrates and judges involved in committing crimes. They in the name of interpreting the laws often act as the protective shield for the goons having or not-having any political colour and allow them to go free whereas they should have been subjected to deterrence. It is the most unfortunate situation at the same time devastating, because here the crimes are committed by those individuals who are being given by the State the responsibility to ensure justice.

WHITE COLLAR – MEDICAL

In India, the white collar crimes are so wide spread that it does not confine itself in the legal arena. Similar unfortunate instances can be drawn from other professions too, like that of medical practitioners, engineers, educationalists, businessmen, politicians and the list goes on. The medical practitioners are often found involved in issuance of false certificates, carrying out illegal abortions, selling out sample drugs and medicine, even in some cases adulterated drugs and medicines to the patients. Dilatory tactics are often adopted by them in providing treatment to their patients with a menswear to extract huge amount of money, no matter the person has good practice. Some of the notorious instances are like that of Nithari
case, where the medical professionals put up before the society the optimum level of brutal character they can reach for the crave of making money. Misleading and fake advertisement claiming absolute cure is also one of the frequent malpractices being carried out in the medical profession. The problem lies in the fact that, they often escape punishment, since they cannot be said to have violated the letter of law, but, by violating the spirit of law, they commit crimes which are truly anti-social and creates enormous damage to the public health and safety at large.

WHITE COLLAR-ENGINEERING

Speaking of the engineers’ role in having their role to play in white collar crimes, we often find instances of underhand dealing with contractors, suppliers, passing of sub-standard works and maintenance of bogus reports of the labour works. They financially earn more for their low grade works from the contractors, than they can earn for the genuine work. Therefore, many of them, out of the greed of earning more and more, play dangerously with thousands of lives of the individuals.

WHITE COLLAR-EDUCATION

The matter comes to the white collar crimes educational institutions do come in the league to operate with impunity. A nastier role is played by the private institutions that are least bothered in providing the education, but only concentrate of making business at the cost of the children’s future. Even rackets operate in these institutions for procuring students to appear in the examinations on the basis of manipulated eligibility certificates, thereby damaging the standard of education in India. When it comes to the Governmental institutions, the teachers and staffs of the institutions are often found to be involved in unscrupulous practices, since they can hardly make fortune from the inadequate salary they receive from the government. Teachers often drag the students for taking private tuitions and even go to the extent of blackmailing them of ruining their future, if they deny doing so.

WHITE COLLAR-CORPORATE

These are only a handful of instances of white collar crimes practiced in day to day life by certain professionals in the course of their profession. The major role in committing white collar crimes are played by the business tycoons and politicians, whose greed and wants multiply with the more they acquire. In India, whenever any major scandal comes to the media focus, a through investigation always finds an unlawful involvement of political parties in it. So far as the businessmen are concerned, their acts of white collar crimes go beyond count. They are termed as the corporate criminals who more often than not, are involved in illegal contracts, combination and conspiracies of trade restraints, unfair labour practices, selling of adulterated foods and drugs, bribing of public officials so on and so forth. They take advantage of the corporate veil and indulged in a number of crimes. The recent Satyam scam case is one of the worth-mentioning illustrations, where it was seen how an individual, hiding himself in the veil of incorporation, indulge in defrauding crores of money.

WHITE COLLAR-UNIVERSAL

The white collar crimes are often master minded and are carried out in a planned manner by technocrats in the form of scams, frauds, etc. facilitated by technological advancements. In
these types of offences not only the individual is being with pecuniary loss but also, such
offences like peddling drugs and narcotic substances, counterfeiting of currency, financial
scams are some of the crimes which evoke serious concern and impact to the national
security and governance. Violation of foreign exchange regulations and import and export
laws are frequently resorted to for the sake of huge profits.

WHITE COLLAR- SOCIETY

The major white collar crime very common among the individuals, no matter he/she belongs
to the middle or upper strata of the society is that of evading taxes. The complexity of the
taxation laws provided a number of loopholes through which many individuals tried to
escape. A tax-evasion has known no professional or class boundary in our country. Be it an
engineer, doctor, advocate, a business tycoon or a simple small industry trader-all have learnt
the trick of evading taxes. The main difficulty posed before the Income Tax Department is to
acquire true information of the real and exact income of these professionals. It is often
alleged that only an insignificant amount of their total income is posed a income before the
Income Tax Department and the rest therefore goes into the circulation as black money. The
frequent modifications in the tax-laws of the country has been able to add very little to put a
check on this continuing menace which is throwing a great negative impact in the
Governmental revenue and thereby the growth of the country.

INDIA CRIME AND FRAUD IN WHITE COLLAR

2010-2011 Annual Global Fraud Survey report of Kroll conducted by Economist Intelligence
Unit gives expected results. Fraud continues to be a big problem worldwide and more so in
India. Of the companies surveyed, globally 75% reported experiencing fraud during the year.
Though the figure has reduced in comparison to previous year’s 88%, the situation is still
dismal.

In India, the situation is disastrous, with 84% organizations reporting that they suffered from
fraud during the year. It is wake-up call for India, as it is ranked second worldwide after
Africa and shares the position with China

The chart below compares the top six fraud categories at global level with India. In most of
the cases, India is doing much worse than its global counterparts are. Worldwide
management conflict of interest, internal financial fraud, corruption and bribery and vendor
procurement related frauds have increased. Physical theft of assets and information theft
decreased. Indian business crucial pain points are corruption and bribery, information theft,
internal financial fraud, financial mismanagement and vendor procurement.
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1. COST OF FRAUD

The report answers the most relevant question relating to fraud – what is the loss caused by fraud? The estimated figure given in the report is that globally organizations suffered 2.1% revenue loss due to fraud. For India, the percentage is higher at 2.4%.

Further analysis available in the report says that 18% of the companies reported an earnings loss of more than 4%. A quarter of these most affected companies suffered losses more than 10%. These companies are reporting corruption, bribery, money laundering and regulatory breaches frequently. However, they are doing nothing about it. The lack of fraud prevention and investigation measures is causing huge losses in these companies.

Indian companies are ill prepared to the fight fraud menace. Just 50% companies have background screening, third-party due diligence and other fraud prevention measures in place. In my view, India does not have adequately trained fraud investigators as part of the risk management teams. Overall, the focus is on financial statements audits and internal audits. These audits are not done to detect frauds.

2. THE INSIDE JOB

Management finds it hard to accept this fact that internal employees and related parties conduct most frauds. The report mentions that insiders conducted 60% of the frauds globally. That is, 28% junior employees, 21% senior employees and 11% third-party agents conducted frauds. In India, 59% of the frauds were conducted by internal sources.

The frauds conducted by senior employees cause more damage to the company. Not only are the financial figures larger, the reputation damage is huge. However, the companies in India still do not have adequate focus on internal controls and management controls.

However, government has initiated some steps to address the high level of frauds in Indian private sector. In my view, the Indian government’s decision to give more power to the Serious Fraud Investigation Office (SFIO) in the new Companies Bill is a step in the right direction. SFIO will be in a position to conduct more investigations, arrests, raids and seizures. This would put some brakes on the escalating financial fraud cases in India.
3. CORRUPTION & BRIBERY IN INDIA

The report has a special coverage on corruption in India. It shows that the 2010-2011 corruption and fraud cases in India – 2G telecom scam, Adarsh Society scam, CWG fraud, various land scams etc. – have negatively impacted India’s reputation internationally. Last decade depicted India’s growth story. The government and private sector post independence never had it so good. Huge investments were planned to improve infrastructure. With liberalization foreign investment flows increased. The sudden spurt in economy also resulted in higher greed and corruption soared. The cases show how senior level politicians and business heads who were much revered and respected compromised their ethics.

As per the report, 78% of the Indian organizations have stated that they are highly/moderately vulnerable to corruption. In my view, this is an understatement; around 90-95% of the companies are exposed to corruption.

The multinational subsidiaries in India are also significantly affected by corruption. Though the FCPA and/or UKBA are applicable to them, the acts do not have much teeth in Indian scenario. In my view, the US/ UK authorities will be able to follow through only on the bigger cases, and the smaller ones will be ignored. Hence, the effectiveness of these acts is limited. Secondly, the developed countries have a one sided view of corruption. They prohibit their own country’s companies from paying bribes. However, accept the bribe money deposits from Indian (and other countries) politicians and businesspersons in their country’s banks. This encourages money laundering rather than curtailing corruption. Although, India has a Prevention Against Corruption Act, it hasn’t reduced corruption. As per the act, government officials cannot receive any form of bribes or grease payments. However, receiving 2-10% bribe of total contract value assigned is quite prevalent. The India Against Corruption moment led by Anna Hazare has forced government to issue a strong Lokpal Bill. The bill expected to be passed in this winter session of the parliament. The implementation of the bill may curb the demand side of corruption to some extent. Recently in October 2011, the Prime Minister announced, “that his government was working on proposals to criminalize private sector bribery and to also make illegal gratification of foreign public officials an offence.” This is in line with United Nations Convention Against Corruption, which India had signed off earlier in the year. The government is also planning to issue a bill to protect whistle blowers. The two bills jointly would have significant impact on curbing supply side of corruption.

FOUR SHOCKING MISCONCEPTIONS ABOUT WHITE-COLLARED CRIME

The most recent issue of Psychology Today has a short column on four major myths that are widely when it comes to white-collar crime—usually described as an illegal act committed for financial gain.

1. White-collared crimes are nonviolent—since white-collared crime is usually characterized as non-violent, many are prone to this myth. But criminals in general have a sense of entitlement and need for control.

2. White-collar criminals are highly paid—you may be thinking of famous Ponzi schemers like Bernie Madoff or Allen Sanford here, but white-collared criminals also depend on poorly paid underlings.
3. White-collar criminals are otherwise upstanding citizens—about 40% of white-collared criminals have a record. So, no.

4. It’s all about cash—Yes, there are poorly paid white-collar criminals, but the mastermind of the crime could be very rich. Researchers say "peer pressure, company culture, and pure hubris" cause people to commit white-collared crimes.

CONCLUSION

India to maintain its growth story needs to reduce fraud and corruption in government and private sector. As previously mentioned corruption and fraud stop multinationals from investing in the country. The decrease in foreign direct investment in 2011 and the international financial institutions outflow of funds from stock markets are clear indicators of the negative impact of fraud and corruption.

Therefore, Indian government must improve governance and take strict action against the offenders. Comptroller Auditor General is showing the way forward, the need of the hour is for political parties to have the spirit to clean up the mess. The private sector must implement fraud prevention measures and focus on ethics to reduce frauds. Both sectors have to collaborate to minimize fraud risks in India. The reasons of justifications are there for the methods used for the control of white collar crimes, the ambivalence of the social response to this sort is so related to wider social factors which have both objective and subjective dimensions. As has been so mentioned a more subjective source of ambivalence in the social response to white collar crimes is the assumption that there is less public concern about these behaviours so termed as white collar crimes, and therefore there is a less support for severe sanctions than in the cases of crimes which are traditional street crimes. But even if there was greater public ambivalence towards white collar crimes in comparison to the traditional crimes, writers such as Box has regarded this as a further challenge ‘to sensitize people to not seeing processes in which they are victimised disasters or accidents.’

Therefore, the motto should always be prevention is better than cure. Since the acts involved defrauding public faith and belief, public as a whole mass should come forward to protect the whole society from these greedy people who are destroying the ethics and morality of the society slowly and slowly for their sole aim of pursuing narrow self.

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