



White-Collar Crime in India

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Abstract:

'White-collar crimes account for enough violations of law. By comparison, the instances of white-collar crimes are more than the conventional type of crimes such as theft, burglary, and arson. The loss incurred through white-collar crimes is far higher than that of the conventional type. In the American Context, it has been estimated that losses from such crime may be as high as 200 billion dollars every year. In India also such type of crimes are increase.' In this article I endeavored to address the intricacies involved in white-collar crimes. My analysis of White-collar crime will differentiate between individuals who steal, defraud and cheat in and out of an occupational context and those who commit the variety of offences attributed to business corporations. I will also be analyzing the corporate crimes and corporate criminal liability and the discrepancies, which flow along with it.

Keywords: *Corporate crime, Crime, White-collar crime*

1. Introduction

Edwin Sutherland for first time coined the term "White-Collar crime" in his address to the American Sociological society in 1939. The whole address was aimed to shatter the conventional and stereotyped images of the criminals as grown and brought up on the dark side of a town, and the belief that the epicenter of the overall Crime problem was that of the lower Strata of the society. He defined white-collar crime as "crimes committed by a person of respectability and high social status into the course of his occupation". Subsequently he modified his earlier definition of white-collar crime as "crimes committed by a person of the upper socio-economic class who violates the criminal law in the course of his occupational activities and Professional activities" and in his work he challenged the traditional image of the criminals and the predominant etiological theories of crimes of his days. The white collar criminals, he identified were often middle aged men of respectability and high Social Status and his definition of white collate Crimes established Status, Occupation and Organization as Central features. He was of the opinion that White-Collar criminals were often found in the affluent neighbourhoods, and they were all well respected in the community. Sutherland opined that the conceptions and notions of crime in his days were not so satisfactory or rather to say were "misleading and incorrect" which were mainly based on the "biased samples" of criminals and their criminal behaviours.

The absence of a precise definition of White Collar crime has plagued Criminologists to analyze and interpret the concept of White Collar crime in their own manner. Subsequently it was very much advent that for some scholars, it was really very hard to accept 'Position as primordial factor. For that very reason today there exists profound disagreement over the precise definition of White Collar crime. White Collar Crimes may be divided into Occupational Crime and Organizational Crime but in common parlance there exist 10 popular types of White Collar Crimes as:

1. Bank Fraud- To engage in an act or pattern of activity where the purpose is to defraud a bank of funds.

2. **Blackmail.**- A demand for money under threat to do bodily harm, to injure property or to expose secrets.
3. **Bribery.** When money, goods, services or any information is offered with intent to influence the actions, opinions and decisions of the taker, constitutes bribery.
4. **Cellular Phone Fraud.** Unauthorized use or tampering or manipulating cellular phone services.
5. **Embezzlement.** When a person, who has been entrusted with the money or property, appropriates it for his or her own purpose.
6. **Counterfeiting.** Copies or imitates an item without having been authorized to do so.
7. **Forgery.** When a person passes false or worthless instruments such as cheque or counterfeit security with intent to defraud.
8. **Tax-Evasion.** Frequently used by the middle-class to have extra-unaccounted money.
9. **Adulteration** - Adulteration of foods and drugs.
10. **Professional crime** - Crimes committed by medical practitioners, lawyers in course of their Occupation.

These crime are committed by people of high status in society such as doctors, advocates, chartered accountants, governments officials and not by hardcore criminals for e.g. Thieves robbers, dacoits, murders, rapists, etc means of crimes differ from the traditional crimes as fraud, misrepresentation, adulteration, malpractices, irregularities etc. These crimes are committed by means of deliberate and planned conspiracies without any feeling and sentiments. When socio-economic crimes are committed people tend to tolerate them because they themselves indulge in them and they themselves often identified with those who do so.

- Originally white-collar crimes meant to describe middle and upper class, business persons who committed crimes in normal course of their work. But now bit refers to a wide variety occupationally oriented violations committed by persons in any class.
- The victims of socio economic offences are normally the entire community, society or even the entire nation besides the individuals.
- These crimes do not involve or carry with them any stigma while the traditional crimes carry a stigma with them involving disgrace and immorality.
- These crimes constitute a separate category because the control of such crime ‘involves the protection and preservation of the general health and economic system of the entire society against the exploitation and waste.’

2. Indian Scenario

There are a number of corporate crimes that have come into light now days. One of the major havoc that is created in present times is because of mysterious disappearance of corporations. Of the 5,651 companies listed on Bombay Stock exchange, 2750 have vanished. It means that one out of two companies that come to the stock exchange to raise crores of rupees from investors’ loot and run away. Even big names like ‘**Home Trade**’ came up with huge publicity stunts but after raising money, vanished into the thin air. About 11 million investors have invested Rs. 10,000 crore in these 2750 companies. We have Securities Exchange Board of India, Reserve Bank of India and Department of Companies Affairs to monitor the stock exchange transactions but none has documented the whereabouts of these 2750 odd companies suspended from the stock exchange. Many of the promoters and merchant bankers who are responsible for these are roaming scot-free. The market regulators and stock exchanges are unable to penalize them or recover their funds. The regulators have been able to identify only 229 of 2750 vanishing companies so far. The market regulators and stock exchanges are unable to penalize them or recover their funds. The regulators have been able to identify only 229 of 2750 vanishing companies so far.

3. Criminal liability of the Corporations

In Indian as well as in international perspective the whole legal frameworks to hold the corporations and multi national companies accountable are systematically being dismantled, even as corporations and other agents of globalization dictate policies of nations. The corporate sector enjoys far more rights than the common people. With the onset of the new trade regime, national laws are being changed to empower corporations with the right to hire and fire at will, to get the first right over natural and community resources. But now the time has come to put a check over their arbitrary acts. There has been a debate as to whether a Corporation can be held criminally liable. The explanation can be given with the help of the following theories:

4. Theory of Corporate Personality

According to this theory corporations as nothing more than collectives of individuals. In this an individual first commits the offence; the responsibility of that individual is then imputed to the corporation.

4.1 Realist theory

According to these theory corporations have an existence, which is to some extent independent of the existence of its members. Here, the responsibility of corporation is primarily. In my opinion realist theory looks more convincing and practically applicable. One of the argument which sustains the presumption that corporate can be held criminally liable is that in many cases it is the corporation itself, through its policies or practices, that has done wrong and prosecution and punishment should be directed at the real wrongdoer. In many cases there is no individual who, alone, has committed a crime. It is the conjunction of the practices of several individuals, all-acting in compliance with a company's sloppy or non-existent procedures that have caused the harm. Alternatively, in many cases companies have complex structures with responsibility buried at many different layers within the corporate hierarchy making it difficult, if not impossible, to determine where the true fault lies.

There is no controversy when fine is only punishment given under any statute. There is also no lie when statute entrusts the court with discretion to inflict fine or imprisonment, as in this case court shall inflict only fine on company. Because a company being a Juristic person cannot obviously be sentenced to imprisonment as cannot suffer imprisonment. Judicial controversy lies in that situation when statute prescribes mandatory imprisonment with fine as a punishment for an offence. In 2003 Supreme Court in Assistant Commissioner, Assessment-II, Bangalore & Ors. v. Velliappa Textiles Ltd & Anr. took the view that since an artificial person like a company could not be physically punished to a term of imprisonment, such a section, which makes it mandatory to impose minimum term of imprisonment, cannot apply to the case of artificial person. However, Supreme Court in 2005 in Standard Chartered Bank v. Directorate of Enforcement in majority decision of 3:2 expressly overruled the Velliappa Textiles case on this issue. K.J Balkrishnan J. in majority opinion held “*We hold that there is no immunity to the companies from prosecution merely because the prosecution is in respect of offences for which punishment prescribed is mandatory imprisonment. We overrule the views expressed by the majority in Velliappa Textiles on this point*”

Another category of serious white collar crime is government fraud, which is an unlawful act that deliberately rid the government of funds through trickery. When the government gets fiddled, taxpayers pay the price. Procurement and contractor fraud are examples of costliest government fraud. In Identity theft the criminal use the personal information of another in order to commit fraud. Crooks of this type of crime have to face heavy penalties if trapped. Insurance fraud is very common in which offender forged claims to an insurance company, personal injury and property damage claims that are overstated in order to collect extra reimbursements. Mail fraud is committed by using Postal Service or any private or commercial interstate mail carrier, such as Mailboxes, etc. Money laundering is a felony in which lawbreakers hide the resource and objective of illegitimately acquired funds. Public corruption is an act of violating the public official's duty of faith towards his

or her society. Anyone who is elected, appointed, hired, or employee of a constituency of citizens commits crime on the state, or local level when an official takes favorable decision in exchange of offered some value. Securities fraud is committed by white collar criminal such as corporations, broker-dealers, analysts, and private investors when the executor intentionally deceives investors for financial profits. The culprit of tax evasion deliberately and illegally avoids paying mandatory taxes to the government. Telemarketing fraud fall under white collar criminal in which wrongdoer make some plan that uses telephone contact to fraudulently rid its victims of funds or assets. The most regular type of telemarketing frauds are prize offers and sweepstakes, magazine sales, credit card sales.

If we have specific legislations to trace out White Collar Criminality then why these offenders go unpunished? Main reasons for which these white Collar criminals or occupational criminals go unpunished are : i) legislators and the law implementers belong to the same group or class to which these occupational criminals belong; ii) less police effort; iii) favorable laws; iv) less impact on individuals.

At this present juncture what we need is the strengthening of our enforcement agencies such as Central Bureau of Investigation, the Enforcement Directorate, The Directorate of Revenue Intelligence, The Income-tax Department and the Customs Department. Concentration and distribution of national wealth must be done in a proper manner. Speedy trial should be arranged by appointing more Judges. Central Vigilance Commission must keep a constant vigil on the workings of the top ranking officers. General public must not avoid being engaged themselves in the prosecution of the White-collar criminals as the offence in general is directed towards them. Lastly if they are traced and proved guilty then Deterrent Theory of punishment is an apt one.

5. Conclusion

The government across the world have given a free hand to corporations to exploit the natural and community resources, while depriving the common people of their right on these resources. For instance, in India, Corporations at Eloor, Kodaikanal and Gujarat have not only destroyed the water and land resources in these areas, but also impoverished communities by degrading their livelihood resources and health. All these communities suffer from disasters similar to Bhopal. Inaccessible to clean and safe drinking water was found to be a major problem in all these areas. There is a sudden spurt of cases of employee's accused of fudging account books or cheating customers. The Ernst and Young fraud survey finds that corporate India is experiencing a wave of white-collar crime like never before. The companies either pollute the water resources to an extent where it is no more portable or over exploit it till the water table goes down or dry up the wells. A befitting example could be of Coco Cola bottling plant in Kerala where the company extract excess amount of water from the ground due to which the water level has gone very low and the near by villages are suffering from scarcity of water. There are also a number of difficulties can be identified in this regard as it becomes very complicated to recognize and report these kind of crimes. With street crimes we have a body in the street, a house burgled, or a car stolen. These easily defined discrete events quickly come to the attention of the police, who then record them. With many white collar crimes victims often don't know that have been victimized, and the sequence of events is often quite opposite "white collar crimes investigators start with a suspected con artist and their question is, what did he or she do and we can prove this? " Many of the most serious white-collar crimes are in creditably complex and require thousand of person hours and millions of dollars to unravel, thus making them difficult to equate with street crime in terms of being able to neatly discover, tabulate and report them. Occupational crimes differ from Common Street crimes only in that people in a position to do so-Medicare fraud commit it can typically only be committed by physicians, and banks employees in position of trust can only commit bank embezzlement. The motive of

occupational criminals is same as to those of street criminals- to obtain benefits quickly with minimal effort.

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