

A Critical Analysis of White- Collar Crimes in India

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I. INTRODUCTION-

The most influential criminologist of the 20th century and also a sociologist, Edwin Hardin Sutherland, for the first time in 1939, defined white collar crimes as “crimes committed by people who enjoy the high social status, great repute, and respectability in their occupation”. The five attributes of the given definition are:

- It is a crime.
- That is committed by an important person of the company.
- Who enjoys a high social status in the company.
- And has committed it in the course of his profession or occupation.
- There may be a violation of trust.

These crimes are quite rampant in third world countries due to the economy, for instance, the ease of doing business has taken a jump of almost 37 positions in the last two years (2018-2020) in India which allows more investment and businesses to flow into the country but exposes consumers and their rights and this has led to the rapid increase of cases over 80% just in 2019. Edwin Sutherland stated that white crime could harm society more than other normal offences mainly because of the financial losses that the public would incur in fact, white-collar crimes can be traced back to the 15th century in the UK and later also in the US during the civil war which allowed large monopolies to take over which led to the enforcement of Anti-trust laws to protect the consumers and allow fair competition.

With the world moving at a fast pace and the rate of development in technology and commerce it's fair to say that India is unable to deal with the increasing level of unprecedented growth which is leading to white-collar crimes such as cybercrimes. This also means that crime can be committed across any country's border. Due to the

ease of committing these crimes, fraudsters have also become greedier and has also resulted in the lower average age of these fraudsters and due to their ease of accessing and optimising technology the number of white-collar crimes is increasing and it also points out that the future of our country is turning towards the dark side.

Related to the corporate sector, white collar crimes are defined as non-violent crimes, generally committed by businessmen and government professionals. In simple words, crimes committed by people who acquire important positions in a company are called white collar crimes.

“The practitioners of evil, hoarders, the profiteers, the black marketeers, and speculators are the worst enemy of our society. They have to be dealt with sternly. However well placed important and influential they maybe, if we acquiesce in wrongdoing, people will lose faith in us.”

-Dr. S. Radhakrishnan

Reasons for the growth of white collar crimes in India

Greed, competition and lack of proper laws to prevent such crimes are the major reasons behind the growth of white collar crimes in India.

Greed

The father of modern political philosophy, Machiavelli, strongly believed that men by nature are greedy. He said that a man can sooner and easily forget the death of his father than the loss of his inheritance. The same is true in the case of commission of white-collar crimes. Why will a man of high social status and importance, who is financially secure, commit such crimes if not out of greed?

Easy, swift and prolong effect

The rapid growing technology, business, and political pressure has introduced the criminals to newer ways of committing white collar crimes.

Technology has also made it easier and swifter to inflict harm or cause loss to the other person. Also, the cost of such crimes is much more than other crimes like murder, robbery or burglary, and so the victim would take time to recover from it. This would cut down the competition.

Competition

Herbert Spencer after reading 'On the Origin of Species' by Darwin, coined a phrase that evolution means 'survival of the fittest'. This implies that there will always be a competition between the species, and the best person to adapt himself to the circumstances and conditions should survive.

Lack of stringent laws

Since most of these crimes are facilitated by the internet and digital methods of transfer payments, laws seem reluctant to pursue these cases as investigating and tracking becomes a difficult and complicated job. Why it becomes difficult to track it is because they are usually committed in the privacy of a home or office thereby providing no eyewitness for it.

Modern technology

With modern technology ease of business is one of its expectations, in a sense, it also applies to white-collar crimes which have allowed them to reach out to a larger number of people and commit large scale crimes without being noticed by the law. Many have fallen victim to different scams such as the credit card scam, moreover, the pandemic opened up a new market for them by exploiting the medical field and creating a black market for COVID medications such as "Eemdisivir" and over a hundred cases were lodged against the illegal sales and use of this medicine and in most cases, the Doctors and Hospital staff were involved.

The need and greed of people have driven them to the extent of exploiting any possible field. It doesn't stop there the development in technology is so rapid that people can acquire nuclear weapons with a click of a button, this was the case in Mumbai when authorities seized two people acquiring 7kgs of natural uranium which is highly radioactive and dangerous to human life. This makes us question the level of threat that these cartels and organizations impose on the nation and the level of sophistication these crimes have reached for the personal gains of their lives.

Lack of awareness

The nature of white collar crimes is different from the conventional nature of crimes. Most people are not aware of it and fail to understand that they are the worst victims of crime. People who are victims of these crimes fail

to comprehend the notion of the crime and understand the exact offence which has been committed and whom to approach or lodge a complaint against because most of the time it involves a large corporation and there may be little or no evidence to essentially produce a criminal and in certain crimes such as scam or fraud people may not even realise that they have fallen victim to a crime such as a bank fraud where yearly there are over thousand cases registered. And in a scam, such as a double-dip scam the victim may fall prey again because the information of the victim is stored and passed on to another scammer. Especially in metropolitan cities these cases are rising but we lack the awareness to become victims of such crimes, a wider reach is required and awareness campaigns by the government may help people understand the severity of these crimes and the loopholes these criminals use and may help reduce the rate of white-collar crimes in future.

Competition

We live in a fast pace world where only the fittest can survive and it has grown to such an extent that crimes are committed for survival especially belonging to the lower socio-economic classes their work environment is poorly designed and they are often underpaid so in order to earn more and make a decent living their moral and ethnic values may be compromised and just to move out of poverty or to make more gains their behaviour cannot be rationalised and is often out of greed that they have no limits. Criminal organizations and cartels are also multiplying and advancing in their methods due to this competition.

Necessity

People also commit white collar crimes to meet their own needs and the needs of their family. But the most important thing that the people of high social status want to feed their ego.

The reasons behind white collar criminals going unpunished are:

- Legislators and the people implementing the laws belong to the same class to which these occupational criminals belong.
- The police put in less effort in the investigation as they find the process exhausting and hard, and often these baffling searches fail to promise favourable results.
- Laws are such that it only favours occupational criminals.
- The judiciary has always been criticised for its delayed judgement. Sometimes it so happens that by the time court delivers the judgement, the accused has already expired. This makes criminals loose in committing crimes. While white collar crimes are increasing at a faster

rate, the judiciary must increase its pace of delivering judgements.

Chronological background

Popularly known as the Carrier's case, it was the first case of white-collar crimes which was documented in the year 1473 in England. In this particular case, the agent was entrusted with the responsibility of the principal to transport wool from one place to another. The agent was found guilty of stealing some of this wool. The English Court after this case adopted the doctrine of 'breaking the bulk' which means that the bailee who was given the possession of goods tried to break it open and misappropriate the contents.

However, the growth of industrial capitalism has taken criminality to the next level. The bourgeois institution dwells into committing such crimes out of greed and misery to have and to be able to attain more. In 1890 in America, the Sherman Antitrust Act was passed, which made monopolistic practices illegal. The penalties imposed on offenders of white-collar crimes in Great Britain and the adoption of competition or antitrust laws by other countries were not as sweeping as the Sherman Act.

In the late 18th and early 19th century, a group of journalist rose the sentiments in the mass seeking reforms. By 1914, Congress was seen making great efforts in strengthening the sentiments laid down by the Sherman Act. This Act proved out to be more stringent in comparison to the Sherman Act in dealing with the monopolistic illegal practices.

White collar crime in India

Corruption, fraud, and bribery are some of the most common white-collar crimes in India as well as all over the world. The Business Standard on 22.11.2016 published a report titled 'The changing dynamics of white collar crime in India' stating that in the last 10 years, the Central Bureau of Investigation (CBI) has found a total of 6,533 cases of corruption out of which 517 cases were registered in the past two years.

Statistics showed that 4,000 crores worth of trading was carried out using fake or duplicate PAN cards. Maharashtra showed a rapid increase in the number of online cases with 999 cases being registered. The report also mentioned that around 3.2 million people suffered a loss because of the stealing of their card details from the YES Bank ATMs which were administered by Hitachi Payment Services.

Advancement in commerce and technology has invited unprecedented growth in

one of the types of white-collar crimes, known as cybercrime. Cybercrimes are increasing because there is only a little risk of being caught or apprehended. India's rank on Transparency International's corruption perception index (CPI) has improved over the years.

In 2014, India was ranked 85th which subsequently improved to 76th position in 2015 because of several measures to tackle white collar crimes. In 2018, as per the report of The Economic Times, India was placed at 78th position, showing an improvement of three points from 2017, out of the list of 180 countries.

India is a developing country and white-collar crimes are becoming a major cause for its under development along with poverty, health, etc. The trend of white-collar crimes in India poses a threat to the economic development of the country. These crimes require immediate intervention by the government by not only making strict laws but also ensuring its proper implementation.

Effects Of White Collar Crimes

Effect On The Company

White collar crimes causes huge loss to companies. In order to recover the loss, these companies eventually raise the cost of their product which decreases the number of customers for that product. This works according to the law of demand states that, other things being equal, when the price of a commodity rises, its demand would fall and when the price lowers, its demand would increase.

In short, the price of the commodity is inversely proportional to its demand. Since the company is in loss, the salaries of the employees are lessened. Sometimes the company cut down the jobs of several employees. The investors of that company and its employees finds it difficult to repay their loans. Also, it becomes hard for people to obtain their credits.

For example, a US-based IT cognizant landed up paying 178 crore rupees to settle the charges levied on it under the Foreign Corrupt Practices Act by the Securities and Exchange Commission. The company had bribed an Indian Government Official from Tamil Nadu to allow the building of a 2.7 million square feet campus in Chennai. Apart from loss in paying 2 millionsdollar bribery amount, the company also had to bear extra charges of 25 million dollars to get free from the charges.

Effect on the employees

White collar crimes endanger employees. They become conscious of their working

conditions, whether it is safe anymore or not. They start doubting if they are safe and that they can still be given in their trust to the company.

Effect on customers

The most important concern of the customers is whether the products which they are using is safe or not. This doubt rise to see the rate at which white collar crimes have been increasing.

Effect on society

White collar crimes are harmful to the society for those people who should be cited as a moral example and who must behave responsibly are one committing such crimes. The society thus becomes polluted.

When the former director of Andhra Bank and the directors of a Gujarat based pharma company, Sterling Biotech, were arrested for their involvement in 5000 crore fraud case. They used to withdraw money from bank accounts of several benami companies. This was one big scam which put the people in fear.

Also in 2018 the Punjab National Bank (PNB) found that fraudulent transactions of value 11, 346 crore rupees have been taking place in its Mumbai branch. "The Staff there used to fake LoU(Letter of Understanding) for the buyer's credit to the company of Nirav modi and Gitanjali Group", as published in the Business World.

Loss of confidence

Stock fraud or trading scandals, like that happened in the U.S. in the 1980s, makes people lose faith in the stock market. Barry Minkow, a teenager and the owner of the business of carpet cleaning built a milliondollar corporation in the 1980s. But, he was able to achieve this only through forgery and theft.

He managed to create more than 10,000 counterfeiting documents and sales receipts without coming to someone's notice. His company although created through fraud was able to make market capitalization of 200 million dollars and leased 4 million dollars of land. Later, he was sentenced to 25 years of imprisonment.

Majors To Control White Collar Crimes

The measures that can be adopted to prevent the commission of white-collar crimes are:

1. The top investigating agencies of the country like the Central Bureau of Investigation, the Enforcement Directorate, the Income-tax Department, The Directorate of Revenue Intelligence and the Customs Department, needs strengthening, by way of implementing strong regulating policies. The Central Vigilance Commission should monitor the working of the officials sitting at top positions

and also cross-check their works, so as to ensure transparency in the system.

2. As the method of commission of such white-collar crimes is advancing, so should the training of the investigating officials. It often happens that ageing officers are well experienced to understand the nature and techniques, but are not able to utilise the technology for tracking the suspect. This happens due to lack of training. So, every investigating officer must be trained in such a manner that, no matter how complicated the case is, they would be able to easily resolve it.
3. To uproot the existence of such crimes, it is very important to include strict laws into the system. Less amount of fine and shorter period of imprisonment makes it very casual for the offenders to commit such crimes.
4. Fast track courts and tribunals should be set in all the parts of the country for the early disposal of these cases. The tribunal should be provided with the power to fine or imprison someone who has been held guilty. Such measures would lower the rates of occurrence of white collar crimes.
5. The electronic and print media should be utilized in the right way to spread awareness about white collar crimes. The general people need to be aware of such crimes and that they are taking place everywhere, from a small cafe to big multinational companies. Also, they need to be aware of the remedies they could seek in case they become victim to such crimes.
6. Stringent laws and hefty fine and long term imprisonment should be given to the offenders for committing such crimes. And for this to happen, the Indian Penal Code, 1860 should be amended and include provisions for the white collar crimes. For example, the IPC could have a separate chapter dealing with white collar crimes.
7. The government may establish a separate body which would look into the matter of crimes and criminality prevailing in the country. The independent body could be named as the National Crime Commission. Since their entire work would be related only to the crimes and would be an independent body, it could work more efficiently towards reducing criminality in the country.

Eron was the seventh largest energy trading company, based on revenue, in U.S. Forgery made them waive off hundreds of millions of debts out of their book. The investors thought that the performance of the company was really

good and stable. But later on it was found that the incredible numbers on revenue records were fictitious. The famous Eron scandal where all the retirement accounts were wiped out it was found that people had lost their normality, their power and public confidence.

Recent white collar crime cases in India SEBI. VS BURMAN PLANTATION AND OTHS

Before the High Court of Allahabad, the learned counsel on behalf of SEBI claimed that the company is being wrongly accused as the company was not in a position to pay its debts, including payments to its investors. When the advertisement by the company was put to question, the council said that the advertisement was given in 2003 while the order was passed in 2004, when the company was not in a position to payback its debts. Moreover, the sum of money which the investors were claiming was nowhere cited. The main claim of the counsel made the legislatures raise the punishment from 1 year to 10 years and also increased the fine which may now extend to 25 crores by amending the laws under section 24(1) of the SEBI Act. At last, Ravi Arora, the accused, was held liable.

ABHAY SINGH CHAUTALA VS CBI

There were two appellants in the present case against whom a charge sheet was filed for committing an offence under Section 13(1)(e) and 13(2) of the Prevention of Corruption Act, 1988 read with Section 109 of the Indian Penal Code, 1860 in separate trials. It was alleged that both the accused had accumulated disproportionate wealth as per their income when they were members of the Legislative Assembly.

When the Central Bureau of Investigation (CBI) initiated its investigation it was found that the father of the appellant had acquired huge properties and same as the case with the appellants. The High Court held that the appellant had provided a totally different office(s) of the accused than they were actually holding at that time. Thus the sanction under Section 19 of the Prevention of Corruption Act, 1988 was held to be without any merit.

II. CONCLUSION

White collar crimes have two surprising features, first, that they are non-violent crimes, though the criminals have the tendency to gain control or have a sense of entitlement, and, second, that they are committed by people in the higher profession.

However, these crimes are also committed by poorly paid underlings, although the mastermind

behind the commission of such crime could be a rich person enjoying a higher social status in his occupation. White collar crimes are often committed because of peer pressure or are dependent on the culture of the company.

As our society is growing towards modernity and the world is experiencing new technological advancement, the rate of crime is also increasing at a faster rate. Particularly the growth in white collar crimes has been enormous. From the medical profession to educational institutions, these crimes are being committed everywhere.

The cases of online fraud are also increasing at an alarming rate. India, as a developing nation, has faced difficulties in leading its economy towards growth because of these crimes in general and corruption in particular.

The investigating officials are in need of training where they could acquire the skill to trace these criminals, otherwise tracking of whom is difficult, complicated and tiresome job. The investigating officials's work should be scrutinized to ensure transparency in the work as the white collar crimes are committed by people enjoying higher social status in their occupation.

The government must make laws that are strict enough to reduce the commission of such crimes. And the system should be such that not only there exist laws giving strict punishment to the accused but also dispose off maximum cases in a short while. If not done so then people will soon lose complete faith in the system, as these crimes are committed by people who should act as a role model for the society.

The media has a key role to play in reducing the rate of increasing white collar crimes. It has been noted that most of the white collar crimes go unreported. So, if the media becomes more active towards publishing frauds and scams at higher levels and revealing how do the people at higher position in a company use their powers arbitrarily, and also make efforts in making people aware about the white collar crimes, and avoid corrupt practices, then this would definitely help in reducing the rate at which the white collar crimes are being committed.