

A CRITICAL STUDY OF WHITE COLLOR CRIME IN INDIA

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ABSTRACT

White collar crime was coined by Edwin H. Sutherland in 1940 to describe criminal acts committed by people occupying a socially superior and economically better position in the society and commit such acts in the line of their profession. The term has since come to mean criminal acts committed by people holding respectable positions and using their profession for illegal gains. The increasing problem of such offenses has resulted in the formation of laws in India, which include the Prevention of Corruption Act of 1988, the Lokpal and Lokayuktas Act of 2013, the Black Money Act of 2015, and the Fugitive Economic Offenders Act of 2018. However, despite such legislation being enacted, the rate of occurrence of white-collar crimes remains high. Some of the major issues include delays in procedures, coordination issues among departments, political interference, and lack of infrastructure. In this context, this research will discuss the development of white-collar crimes in India and the inadequacy of current laws to deal with such crimes. It will further shed light on some organizational barriers that must be addressed through more advanced methods. Moreover, it is also pointed out by the research that the increasing intricacy of corporate arrangements, electronic payment systems, and foreign transactions has made it tough for law enforcement authorities to detect such crimes and bring them to justice. Using shell companies, foreign bank accounts, and other financial schemes, criminals try to cover their tracks, which make it harder for the efficiency of law enforcement authorities. the above research highlights the need for developing a culture of ethics along with any legislation in this regard.

Keywords: SEBI, corporate governance, economic offense, PMLA, white collar crime

I INTRODUCTION

White-collar crime is rather a recently discovered crime form that developed along with the growth and progress of industrialization. For many years, people believed that crimes such as murder, rape, or robbery were typically performed by criminals with poor or middle-class origins. Nevertheless, this is a false claim since crime is possible in all segments of society; people of any socio-economic status may commit crimes. Crimes of white-collar crime type are commonly committed by those who occupy a certain position of importance, confidence, or authority in the society, meaning they may belong to the upper layers of society. The commission of this kind of crimes is related to one's professional activity, which is aimed at making personal financial profit or evading liability¹. It should be noted that, in the case of such crimes, it does not matter whether it concerns wealthy people; even people of middle or lower classes may be perpetrators. For example, an ordinary doctor from a modest social layer may take part in illegal organ traffic. The concept of white-collar crime is relatively modern, and it includes various types of unlawful actions, either criminal or civil offenses. Generally speaking, white-collar crime means illegal behavior of a person. Over the last few decades, there have been instances where India has seen tremendous growth economically and socially as well as its inclusion within the international economy. However, along with these advancements, there have been certain drawbacks in the form of advanced forms of crimes that have taken place. One of the major types of crime is white-collar crime. It is different from any other crime because it is not violent and still causes huge monetary loss. However, the issue of white-collar crime has also gained significance among the academic and legal discourse in India, considering the rapid economic and organizational development in the country. The theory of white-collar crime, which was originally coined by Edwin H. Sutherland, has attracted considerable attention from the academia through many articles and books. White-collar crime has been described in relation to its characteristics, motivation, and effects with an explicit focus on its hidden and complicated nature. Based on the extant literature, it is apparent that there are some significant differences between white-collar crime and traditional crimes. To start with, white-collar crime is known for its non-violent form, technical sophistication, and socio-economic status of the offenders. Moreover, researchers have also pointed out that offenders resort to using legal business operations to conduct their crimes. In the case of India, earlier research has mostly focused on issues associated with regulatory failures, long trial process, and increasing correlation between economic power and political influence.

¹ Indian Bar Association, *White-Collar Crime in India: Trends and Analysis* (2021).

II DEFINITION

"The white-collar crime," according to Edwin H. Sutherland, is any form of illegal act that is perpetrated by people of high stature and reputation while at work. Generally, white-collar crime may include any non-violent and monetary crimes carried out by deception and misuse of one's position for personal gains. Simple definition "White-collar crime" can simply be described as a crime that is committed without violence within a business or occupational environment, mostly in a bid to gain from his/her position/status. It may also describe as a form of criminal behavior in which fraudulent acts like bribery and money laundering are carried out in order to gain financially."

White-collar crime in the corporate world is any crime carried out in an office setting for profit without resorting to violence by persons in the corporate world through deception and secrecy in order to make profit or gain access to assets or an unfair advantage. The term was first coined by Edwin Sutherland in 1939².

III DIFFERENT KINDS OF CRIMES

Taking into consideration the emerging trends in white-collar crimes in India, according to the Indian bar association, the Central Bureau of Investigation (CBI) has found out a total of 6,533 instances of corruption in the last 10 years, out of which there are 517 reported instances over the past two years.

- a) **Bank Fraud:** This type of white-collar crime includes the act where a person takes money or property from banks without obtaining permission. The act of deception may include impersonating oneself as a bank or any other financial institute to take property or money from citizens.
- b) **Bribery:** When a person offers some services to another individual in return of something valuable like money, the criminal act of bribery is committed. The crime will be committed ³in case if an electoral official demanded a bottle of wine from a voter before permitting him to vote.
- c) **Cybercrime:** The Information Technology Act of 2000 is the only law covering the acts of cybercrime. It is difficult to provide the definition of such crime when dealing with crimes of computers and internet; therefore, the definition of cybercrime is not provided under any acts or laws.

² The Representation of the People Act, No. 43 of 1951, § 123, India Code (corrupt practices in elections).

³ Indian Bar Association, *White-Collar Crime in India: Trends and Analysis* (2021).

d) Tax Evasion: This refers to the act of avoiding paying the taxes using unlawful means. Tax evasion could take various forms like income concealment, underreporting of income, overstating deductions, and maintaining hidden accounts. Contrary to tax planning which is a legally acceptable means of reducing taxes payable by a person, tax evasion is an illegal activity. The impact of tax evasion on the economy arises from reduced government income. This affects provision of public amenities such as health facilities and education. The act causes inequity because people who engage in this vice pass the burden to responsible taxpayers in the country. This is a serious matter especially in India where there is a significant level of tax evasion mainly from wealthy persons. Taxation authorities should enforce regulations that enhance transparency in the system to minimize tax evasion.

e) Money Laundering: Money laundering entails the conversion of illegal monies into legitimate proceeds. Generally, it follows three stages starting from introduction of money, to a series of transactions, and finally integration into the economy as lawful income. Offenders find it easier to utilize the proceeds of their crime after undergoing this procedure

Corporate Crime: Corporate crime involves any criminal activity that has been performed by a corporation and/or its agents. Such actions usually happen to earn more profit or to gain an edge over the competitors. They involve various activities such as accounting frauds, breaking the environmental laws, engaging in unhealthy trade competition, or misleading consumers. Corporate crimes can have far-reaching implications, and affect not only individuals but even markets and national economies. Account manipulation and hiding of losses cause problems for stakeholders and investors, while environmental breaches can harm both the community and ecosystems. In recent times, corporate crime has received considerable attention in India⁴. This was mainly due to many notable cases which showed the weak points in corporate governance. The major one is the absence of any accountability in higher managerial positions because decisions are taken collectively. To control corporate crime, regulatory measures need to be enforced, along with transparency and ethics in business. The role of regulators cannot be denied, although companies also need to take measures internally to prevent any criminal conduct.

⁴ The Information Technology Act, No. 21 of 2000, §§ 43, 66, India Code (2000).

MAJOR CHALLENGES IN INDIA

Use of Complex Corporate Structures and Lack of Transparency in India Another persistent obstacle in investigating white-collar crime in India is the extensive use of complex corporate structures together with the lack of transparency concerning ownership and financial flows. As globalization has developed, Indian companies have started operating using a multilayered structure where there could be a parent company, subsidiaries, joint ventures, associates, and holding companies located in various jurisdictions. Although all of these practices may be perfectly legal, they are used as an instrument to conceal criminal activity. One particular problem of India is the existence of so-called shell companies. These are entities with no or very minor activities that exist only on paper and do not have premises. Such companies serve to launder and disguise the sources of the funds. In many Indian cases, the money obtained as a result of fraud, bribes, and tax evasion goes through a series of such shell companies that create great difficulties for organizations such as the Enforcement Directorate and the Central Bureau of Investigation to find out the audit trail. An additional challenge in fighting white-collar crime in India is associated with the practice of using offshore financial centers.

a) Challenge in Detection

Furthermore, one of the major problems inherent in white-collar crime is the delayed discovery of the offense. White-collar crimes are sophisticated and technologically advanced; hence, identifying such crimes cannot be as simple as in case of conventional crimes. Also, the sophistication of these crimes is another factor that may lead to difficulties in the process of their identification and apprehension. For instance, it can be supposed that white-collar crime is a type of crime that cannot be easily detected due to its particular characteristics. The latter includes such types of crime as financial frauds, cybercrime, and insider trading. Therefore, in addition to having law-enforcement knowledge and experience, law enforcers must have enough financial knowledge and analytical skills to detect such crimes. Furthermore, it might be difficult for law enforcers to identify white-collar crimes because these crimes are often committed by people who know about the regulations concerning finance⁵. For example, a high-ranking official, financial analyst or accountant might commit white-collar crimes as he/she knows perfectly what actions might guarantee legal financial

⁵ Companies Act, No. 18 of 2013, §§ 89–90, India Code (beneficial ownership disclosure).

transactions. Hence, the latter are very complicated to detect until the organization faces considerable financial losses.

b) Conviction Rate

The mere fact that white-collar crimes are detected in India does not translate into their successful conviction. In fact, the conviction rate is still relatively low, with an investigation being quite complicated, time-consuming, and laborious. There are various reasons that lead to this situation. Firstly, it should be pointed out that any investigation of corporate crimes requires thorough examination of numerous financial documents, forensic accounting, and analysis of digital evidence. Thus, the Enforcement Directorate and Central Bureau of Investigation have to examine a large amount of financial data, emails, etc., thus complicating the process of conducting an investigation. Secondly, white-collar crime cases in India take several years to reach a conclusion, and sometimes it takes decades to achieve this goal. Various delays and adjournments slow down the judicial process and make the process less effective and less efficient than it could be otherwise. Furthermore, there are numerous legal procedures that must be performed in order to build a convincing case and prove one's guilt. Proving mens rea and establishing the direct relationship between the accused and the offense are particularly problematic, especially considering the complexity of the modern corporate environment. Famous and influential people accused of fraud always have competent.

c) Impact of Power

Among other issues connected with handling white-collar crimes, one should mention the ability of people accused of such violations to have great influence on the situation. Ordinary criminals may lack any special skills; however, people who commit white-collar crimes tend to work in various business or governmental organizations. This means that they have significant influence, thus complicating all the process of prosecution. Firstly, there is the threat of affecting the process of investigation. Although special organizations such as the Enforcement Directorate and Central Bureau of Investigation have certain independence during the process of investigation, some outside forces may have an impact on their activities, making this process biased or ineffective. Because of the existence of influential individuals, there is the risk of facing various difficulties during the process of collecting evidence against

perpetrators⁶. The second issue related to the question of working with influential criminals consists in the complexity of obtaining relevant information. These individuals have enough knowledge about the way in which various organizations function and have many connections that will allow them to interfere with the process of obtaining evidence against themselves. These types of criminals can even try to affect documents or witnesses.

Economic Consequences

These offenses may result in tremendous financial loss for states, firms, and people. Corruption, fraud, and tax evasion decrease state revenues and hinder economic growth. In most instances, the cost of these crimes is transferred indirectly to common people via increased taxation and lower public services.

Lack of Strict Regulation

Despite India having multiple legislations and regulating authorities, there is no strict enforcement. Lack of coordination among various agencies and insufficient funds hamper the effectiveness of the whole regulatory framework.

Common Corporate crimes in India

Some common corporate crimes committed in India include the following: Antitrust Violations:

The antitrust law applies to all the levels of the business in an attempt to prevent any practice that may restrict trade (Bhattacharjea, 2012). In India, recently the antitrust authority Competition Commission of India found Google guilty of practicing search bias. This search giant has been slapped with a fine worth US\$ 20 million because of such practices. Bank Frauds: According to India's apex Reserve Bank of India (RBI), there were over 23,000 instances of fraud reported in banks totaling up to a massive Rs 1 lakh crore within five years. There were altogether 5,152 instances of bank frauds reported during April 2017 to March 2018, and Rs 28,459 crore was allegedly involved in these cases of bank fraud in India (PTI, 2018). Bankruptcy Frauds⁷. The bankruptcy fraud is considered to be a type of white-collar crime whereby a company hides some of its assets to avoid making any forfeiture of assets. In such white-collar crime, companies make false claims about their assets and liabilities to fool

⁶ The Prevention of Money Laundering Act, No. 15 of 2003, §§ 3–4, India Code (2003).

⁷ The Prevention of Corruption Act, No. 49 of 1988, India Code (1988).

creditors, with the aim of avoiding making payments (Srivastava & Mukherjee, 2015).

RECOMMENDATIONS

In addressing white-collar offenses in the business world, the answer lies beyond merely creating new regulations. It involves crafting a framework in which people have confidence and can contribute to the process. In the Indian scenario, there is a dire need for bolstering organizations such as the Securities and Exchange Board of India (SEBI) and the Reserve Bank of India (RBI), yet more crucially, it is imperative that such organizations operate independently and receive sufficient funding. It would be unwise for investigations to become an elusive affair; they must be swift and thorough, with assistance from up-to-date technologies like forensic accounting and computerized analysis. Meanwhile, it is equally important that corporate culture undergoes a change too. Most large cases of fraud occur within companies for several years, not because they cannot be spotted, but because employees are reluctant to report about the issues that they notice. Whistleblower systems, if developed properly, could become an effective tool for fighting fraud – employees need to know that they can safely talk about their observations without the fear of losing their jobs. In such situations, it is essential for corporations to go beyond mere compliance programs and encourage ethical leadership. Improving coordination among organizations like the Enforcement Directorate and Central Bureau of Investigation would be another measure that could be taken up. While nowadays financial crimes cross the geographical and digital border within seconds, the investigation process takes a much longer time to finish. This challenge can be addressed through increased flow of information, speedy judicial processes, and special courts to consider the cases of financial crimes. The delay in providing justice not only affects the accused but the entire system as well. Finally, it is important to mention the necessity of properly dealing with the problem of accountability. It is a great demotivating factor to see that certain individuals manage to escape punishment despite their wrongdoing. It is essential for the government to ensure proper accountability by applying severe sanctions on those who have been caught. Ultimately, the fight against white-collar crime involves not only the imposition of punishment but also rewarding proper conduct.

CONCLUSION

White collar crimes are highly relevant and important nowadays because of the number of such cases and influence on numerous aspects of people's lives. Although there are no violent