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Growing Dimensions of White Collar Crimes: The Illegality and Control

GROWING DIMENSIONS OF WHITE COLLAR CRIMES: THE ILLEGALITY AND CONTROL

by

Adya Pandey*"Society invites the crime and criminal accepts the invitation"*

Vikrant Parasai

ABSTRACT

In any society, an act in disobedience of law is regarded as crime. This does not hold true in respect of acts in disobedience to civil or personal laws unless the act is declared a crime by law. As Terrence Morris held, "crime is what the society says is crime", any deviation from the standard behavior fixed by society shall constitute crime. But crime is not absolute like sin and exists beyond the limits of what men say, do or think. It connotes a rather relative definition of behavior that constantly undergoes changes. White collar crimes denote the conventional change to the traditional definition of crime. The phenomenon of white collar crime is not new and is as old as depravity of society. The society and the legal systems had however remained ignorant of the ill effects and harm caused by them to the society. It is only recently that it has been identified as a crime, a social evil akin to crime. Unlike a legal category that incorporates specific offences, white collar crimes are social construct. It is an illegal act committed in the context of a lawful occupation involving breach of trust, committed with absence of



Page: 140

physical force and having money property and power as primary goals. White collar crimes are serious offences in terms of both economic and social cost. Attributing illegality to these offences is a challenge to the legal systems as these offences do not fall within the neatly defined definitions of traditional crimes, are planned in utmost secrecy and are committed by professionals. With advancement of technology financial risk and reputational damage from white collar crimes, like fraud, bribery, corruption, cyber threats, counterfeiting, insider trading, embezzlement, racketeering, larceny as well as terrorism, has increased. Threats have become more complex with fraudsters becoming savvy and sophisticated. Rapid technological advancement is challenging the boundaries of white collar crimes. It is necessary that government and companies must work in tandem in this era of evolution and adopt techniques to battle the risks associated with white collar crimes through enhanced compliance.

Keywords: Crime, Socio-economic Offences, White Collar Crimes, Risks of White Collar Crimes.

I. INTRODUCTION

The modern criminal law has no universally accepted definition of crime. It is generally understood as an act harmful to individuals, community, society and to the state. Going by the normative definition, crime is any deviant behavior that violates prevailing norms and cultural standards regarding the general human behavior. The genesis of definition of crime lies in the unit called society. In every society there exists certain standards of behavior which have the approval of the people living in the

society in general. Any deviation from the set standards of conduct is generally prohibited and loosely termed as crime. Laws that govern the society are reflections of the public opinion of that time and thus any disobedience to the law is thus regarded as crime. Stephen defines crime as "*an act which is forbidden by law and against the moral sentiments of the society.*"¹ Thus for an act to be crime it must be in violation of law and at the same time it must be opposed to the moral sentiments of the society. Morals are relative and moral values a varying concept they vary from country to country which is evident from the fact that the same act may be a



Page: 141

crime in one country and may not be a crime in another country. Polygamy is prohibited among Hindus by the Hindu Marriage Act, 1955 but there is no such law for Christians or Mohammedans. The term crime has varying content, crime unlike sin cannot be defined and it exists beyond the limits of what men say or do.² It is essentially a relative definition of behavior that is constantly undergoing changing.³

The range of criminal activity cannot be limited to what people think is wrong. Crime is an ever changing concept (society being of dynamic nature). Its limits transcends the traditional notion of crime as that which shakes the moral sentiments and includes elusive acts which though wrong morally, evade the public eyes. It also includes those acts which do not fit into the compartments of traditional definition of crime as theft, murder or robbery. Thus crime as a subject of criminal study does not only cover the traditional notions of crimes but other conventional modes of crimes also, bulk of which constitute economic offences, termed as socio economic offences. Certain professions offer lucrative opportunities for criminal acts and unethical practices which hardly attract public attention. There exists crooks and unethical persons in business, various professions and even in everyday life. They become unscrupulous because of their neglect at school, home and social institutions. Such deviants have scant regard for honesty and ethical values carry their illegal activities without fear of loss or prestige.⁴ These acts by professionals constituting white collar crimes and are subsets of the larger socio economic offences.

A. Emergence of socio economic offences

Traditional crimes have been in existence since the human civilization but scientific and technological advancements contributed to a new form of criminality, which later owing to its peculiar characteristics was coined as socio economic offence Socio economic offences are product of industrial revolution.

The industrial revolution dismantled the feudal structure of society and unshed an era of scientific thinking. Towards the 18th century a revolution occurred in the technique and organization of production which led to the emergence of a new kind of economy which came to be known as the industrial economy.⁵ Villages got replaced by factories, large chunks of populations settled near the factories, people opted for industrial jobs. Thus the whole societal pattern got disturbed and it was from here that a new urban class emerged. The society now stood divided into urban and rural class. This new social structure challenged the accepted moral and social beliefs. Industrial revolution gave birth to a new form of criminality which unlike the traditional crimes



Page: 142

was associated with upper and middle class people, committed by them during the

course of their occupations. Greed for money outweighed every ethical value. Money became the end for everything. Blinded by lust and greed for money people indulged in all kinds of unethical and immoral activities which adversely affected the health and material welfare of the community. The genesis of socio economic crime has almost been the same throughout the world and socio economic criminality can rightly be said to be the product of industrial revolution.

B. Meaning and nature of white collar crimes

White collar crimes are subset of the larger socio economic offences. Both are often intersecting. But what differentiates a white collar crime from the larger socio economic offences is the fact that white collar crime are the crimes done by persons belonging to upper class of the society, having social respectability. The accused in such cases does not commit a crime out of poverty, but commits an illegal act owing to his greed. The victim may or may not be an individual, but the harm is generally to the society. These are non violent crimes committed for financial gain and involve deceit, concealment and violation of trust.

The concept of white collar crimes found its place in criminology for the first time in 1941 when Sutherland published his research paper on white collar criminality in the American Sociological Review. He had conducted a research on the then top corporations working in US and he was found that various unethical practices like trade restraint, trade barriers, and price fixing were widely practiced by the corporate giants. Based on his research Sutherland, concluded that white collar crimes are more dangerous to the society than ordinary crimes as the financial loss to the society from white collar crimes is far greater than burglaries, robberies, etc. White collar crimes by their very nature are such that damage or injury caused by them is so widely diffused in the larger body of the society that their gravity in regard to individual victim is negligent.

C. Characteristics of white collar crimes

- i Affect not only the health and material welfare of the individual but also the economic structure and social fabric of a nation.
- ii Are committed by middle and upper class people.
- iii Motive is greed and not lust or hate.
- iv Mode of commission is fraud, misrepresentation unlike force commonly associated with traditional crimes.



- v Victim is usually the state or even when the victim is an individual the harm is to the society at large.
- vi The act mostly deliberate and willful.

D. Definitions of white collar crimes

E.H. Sutherland, the father of white collar crimes pointed out that besides the traditional crimes like assault, robbery, dacoity, murder, rape and other acts involving violence, there are certain anti-social activities which the persons of upper strata carry on, in the course of their occupation. These activities were for a long time accepted as a part of usual business tactics necessary for a shrewd professional man to succeed.

Sutherland was however in fact preceded by other writers who drew the attention of the society to the upper socio economic group which was exploiting the economic system to the detriment of the common man. Albert Morris in his paper *Criminal*

Capitalist had underlined the growing incidence of crime as organized business and its evil effects on society⁷. He asserted that anti-social activities of persons of high status committed in course of their profession must be brought within the category of crime. Finally it was Sutherland who pioneered that the upper class crimes committed by upper socio economic groups be termed as white collar crimes so as to distinguish from traditional crime which he referred as blue collar crimes.

Edwin Sutherland defined white collar crime as:

"A crime committed by a person of respectability and high social status in the course of his occupation."⁸

The criteria of social status chosen by Sutherland to distinguish a white collar crime from traditional crime was significant as it challenged the popular criminological theories that attributed criminal motivation to poverty. By Social status criteria he did seek to distinguish the illegal behavior of the socio economic offenders and also suggested establishing a distinct method of controlling this behavior owing to the nature of crime. Distinction was to be understood in terms of opportunity for criminal behavior and severity of punishment.



The differentiation by Sutherland of social status however was criticized as being not practical and therefore of little use. It was asserted that affluent people are capable of committing the same range of illegal activity as their counterparts in cases of murder, rape, illegal drugs, robbery tax evasion, etc. It was asserted that such a distinction shall amount to separate illegalities which are virtually same.

The other criteria used by Sutherland to define white collar crime has been of social location which is reflected by the phrase in the course of occupation. This criteria asserted that it is not only the nature of the offender but also his social location that distinguished the whole species of white collar offences from the other crimes. By introducing this criteria he asserted that the occupational settings enable to such offender to scrutinize opportunities. They then are able to indulge in criminal activities owing to the responsibilities and resources available to them in their occupational settings.

Other scholars like Herbert Edelhertz and Ronald L. Akers also defined white collar crimes.

Herbert Edelhertz defined white collar crime as "*an illegal act or series of illegal acts committed by non-physical means and concealment or guile, to obtain money or property, to avoid payment or loss of money or property or to obtain business or personal advantage.*"⁹

This definition of her Herbert was criticized for the reason that though committed by non-physical means certain economic offences or white collar crimes may not just have physical but can also have violent effects. An industrial plant knowingly keeping carcinogenic waste which when dumped in water pollutes the water supply can be placed under such category. Further the definition had been criticized on the ground that white collar crime is not about severity of harm caused but the method of committing.

Ronald L. Akers described white collar crimes as "*violation of legal norms governing lawful occupational endeavors.*"¹⁰

By the term "violation of legal norms" he meant the exclusion of the customary

criminal laws.



Page: 145

II. ISSUE OF CRIMINALITY OF WHITE COLLAR CRIMES

A controversial aspect in relation to white collar crimes has been the issue of determining their criminal status. Owing to their complex nature and mode of commission, they cannot be put under the same category as that of traditional crimes and for this reason often the question arises as to how they can be dealt under the criminal law. Much of this controversy however also is attributable to not having a clear definition of crime itself. The issue relating to criminality of white collar crimes can be summarized as under:

The detection and prosecution of white collar crimes is dealt by administrative agencies and not by criminal courts. The procedures of traditional justice system do not apply to them.

Difficulty in proving intent or relevance of intent.

Absence of public moral outrage.

Not easily distinguishable from accepted business practices.¹¹

III. WHITE COLLAR CRIMES AND INDIAN PERSPECTIVE

White collar crime is a global phenomenon and India is no exception to it. The emergence of white collar crimes in India can be traced back to the advent of British Colonization during the period of Industrial Capitalism. The vicious cycle once started at that time has today spread its tentacles to almost every profession and area. The white collar crime which was in its nascent stage then, has today emerged as a full grown offence and has been posing a challenge to the justice system. The greed and lust for money has not spared even the noble and honored professions of the country. The legal, medical and the education sector all today are gripped by the temptations of unethical practices.

It has become common phenomenon in the legal profession for advocates to abet wrong to serve their narrow interest, fix cases for their rich clients, arrange professional witnesses, fabricate evidences. Advocates of today blatantly violate the ethical standards of the legal profession and act in complete abjection of pious oath to serve the society.

Another important profession in the grip of unethical practices is the medical profession. It has become a common practice among the medical practitioner to adopt dilatory practices in providing treatment to the patients. They also



Page: 146

indulge in various unethical practices like issuing false medical certificates, carrying illegal abortions, giving misleading and fake advertisement claiming absolute treatment of an illness. Doctors often misguide patients as to the procedure of a treatment and make them consent to it.

Educational institutions also form an area wherein white collar crimes have become predominant. Privately run institutes submit fake details of their college and get financial aid from the government. The teachers and other staff members are paid meager salary, far less than what they are supposed to receive. In this way the

institutions benefit in illegal way.

IV. CHANGING DYNAMISM OF WHITE COLLAR CRIMES IN INDIA

With the advent of globalization and advancement of technology the nature of white collar crimes has tremendously changed and become more complex. Within the dimensions of white collar crimes are now included offences like bank frauds, black mailing, cyber frauds and the like. Focus has shifted from individual to organization. Crimes today are either committed individually or in collaboration with other criminals, technology is used to evade detection, new methods of offering kickbacks have been formulated.

In the recent years bribery and corruption have been on increase in India. Various high profile cases of corruption have become political and election issues. The saddened to state of affairs is that taking or giving bribery has become very prevalent among the government offices. Government officers holding post like IFS and Income Tax Officers are frequently caught by the enforcement agencies accepting bribe for doing a certain work.¹²

The Indian Criminal Laws have plethora of legislation to tackle the menace of giving or accepting bribery. Bribery is an offence that involves two parties the offence: bribe giver and the bribe acceptor. The legislations framed to tackle this offence have made it punishable at both instances: at the instance of giving as well as at the instance of accepting. One of the important legislation in this regard is the Prevention of Corruption Act 1988 that criminalizes recipient of any undue advantage by public servants and providing such undue advantage to the other persons. The act targets middlemen also who facilitate bribery. The act provides penalties in the form of imprisonment ranging from 6 months to 10 years and fine for which no amount is mentioned.



Further there are service rules for government officials which require them to conduct as per the guidelines of their service rules.

Foreign Contribution Regulation Act 2010 yet again another legislation that prohibits the acceptance of hospitality or contribution from foreign source by persons including legislators, judges, political parties or their office bearers, government bodies and employees owned and controlled by the government except with the permission of the central government. Foreign source includes any foreign citizen, company, entity, multinational corporations trust or foundation. Such contributions are required to be registered with the FCRA.

The Right to information act 2005 allows Indian citizens to obtain information from any public authority subject to specified exceptions. It also requires the public officials to publicly disclose certain information relating to their functions a duties. In recent years RTI has become a key tool in fighting against corruption and has been credited for promoting transparency in government and bureaucracy.

Black Money (Undisclosed foreign income and assets) and Imposition Act 2015 levies penal rate of tax on any undisclosed asset or income held abroad by any person in India and penalizes individuals for non-disclosure of foreign income and assets, evasion of tax etc.

The latest The Fugitive Economic Offenders Act 2018 seeks to prevent offenders accused of economic offences from evading prosecution within the country. The Act targets fugitive economic offenders against whom an arrest warrant has been issued

for predicate economic offences involving Rs 100 crores and who have either left the country to avoid criminal prosecution. The strength of this Act lies immediate confiscation of all properties

An important and rather emerging white collar crime that Corporate Fraud. Fraud generally means an intentional deception made with the objective of making personal gain or causing damage to another person. Corporate fraud takes place when a corporation provides purposefully provides dishonest information which the objective of obscuring truth and deceiving the recipient of the data with intent to gain an advantage.¹³ Companies indulge into unethical practices mainly for the purposes of making falsified money, enhancing the image of the company in the market, misleading the Government authorities for tax evasion. A report of the committee on prevention of corruption observed, *"The advancement of technological and scientific development is contributing to the emergence of mass society with a large rank in file and a small controlling elite, encouraging the growth of monopolies, the rise of a managerial class and intricate institutional mechanisms. There is a necessity*



Page: 148

*for a strict adherence to high standards of ethical behavior for even the honest functioning of the new social, political and economic processes."*¹⁴

The financial and corporate frauds like Harshad Mehta scam, Satyam Fiasco, Sahara case not just drew the attention of the law makers and pressurized them to put in place certain set standards of corporate governance. These cases made it imperative for the law makers to apply stringent methods to tackle corporate frauds. Fraud in relation to affairs of a company or any corporate body is defined under section 447 of the Companies act 2013. It includes act, omission, concealment of fact or abuse of position committed by any person or any other person with the connivance in any manner, with the intent to deceive, to gain undue advantage from or to injure the interests of the company or its shareholders or its creditors or any other person whether or not there is any wrongful gain or loss. The act has made the offence of corporate fraud a non-compoundable offence thus putting the offence under the category of serious offence.¹⁵

The act goes a step further that to just fixing a professional liability to imposing a personal liability by making directors, key managerial personnel, auditors or officers of company, liable for fraud if they act in contravention of the provisions of the Act. The Act is fitted with mechanisms like an office of serious fraud investigation office (SFIO) that shall investigate frauds relating to companies. Conferred with the powers of arresting the individual the SFIO shall be the sole authority to investigate the case of corporate fraud once the matter is taken up by it. A cognizance of the issue of commission of fraud in relation to affairs of the company can be taken by the central government on the receipt of a report of the registrar or inspector; on intimation of a special resolution passed by a company that the affairs of the company ought to be investigated; or in public interest.

V. WHITE COLLAR CRIMES AND THE CORPORATE WORLD: CRITICAL ISSUES

A. E-commerce and white collar crimes¹⁶

Digitization has changed the conventional method of doing business and replaced it with online marketplaces. The online platform of selling has complicated the risk scenario making the e-tail susceptible to white collar crimes. Increased internet penetration, declining data tariffs, widespread use of smart



Page: 149

phone devices, provisions like cash on delivery have while helped in boosting the e-commerce market but has also increased the challenge of managing risk generally associated with online transactions. Risks like selling of counterfeit goods, logistics fraud, data security, supply chain fraud are today throttling the e-commerce industry.

B. Money Laundering and White Collar Crimes

Black money has become a big issue in the recent years. White collar crimes in the financial sector occur in the form of identity theft, which is stealing personal and confidential information from an individual without their approval or knowledge in order to dupe them. This is done generally using credit cards or bank accounts, false and forged documents. The impact of offences like identity theft usually have adverse effect on the organized crimes and can become a way of committing other offences like tax evasion, trafficking and even terrorist financing.¹⁷

C. Cybercrime and white collar crimes

The government, individuals and businesses have fallen prey to cybercrime. Cyber criminals are getting sophisticated and wreaking havoc by defacing websites and stealing confidential and privileged data for financial gain. Of late ransom has become a key threat that has bypassed the traditional layers of security and makers' the user's computer files inaccessible the user is then blackmailed to pay a ransom in order to have an access to data. Another cybercrime that has become a concern is spear phishing which involves targeting certain people or enterprises to create payloads that deceive the target into payments of fraudulent bank accounts.¹⁸

D. Non-Performing Assets

In the recent years Indian banking system has been plagued with rising menace of non-performing assets. Non-performing assets have the effect of paralyzing the banking system, thus weakening the economic system. Due to lack of monitoring at the internal levels in banks, certain individuals are able to influence the bank employees and manage to get loans much beyond what they were entitled to get. They keep getting their loan agreements renewed exceeding their influence. Left unchecked they simply flee away from the country. The high profile case of liquor baron Vijay Maliya is a glaring example in this regard.



Page: 150

The above challenges make it imperative for the corporate India and the government to join hands together to tackle the imminent problems around white collar crimes. It is important to note that technologically advanced platforms shall be necessary to be evolved as such crimes have not just become complex but have also transcended the limits of countries and have cross border effects. This would further demand closer collaboration between the enforcement agencies of a country and the enforcement agencies of other countries.

VI. TACKLING WHITE COLLAR CRIMES

Curbing white collar crime shall require persistent efforts by government. But to tackle this offence it shall be required by the government to include people of the country also in its initiatives. People shall be required to be sensitized towards these offences and it is only in collaboration of governments and people at large that the any

measures undertaken shall have any concrete effects. Certain initiatives that have been undertaken by countries around the world to tackle white collar crimes and that India too can adopt are listed below:

A. Establishing specialized investigating agencies¹⁹

Complexity and sophistication associated with the commission of white collar crimes makes it necessary that such matters be dealt by professionals having the requisite training to detect such crimes. The detection of these crimes require sharp observance. In simple language it shall be necessary to have professionals with forensic skills. In India no efforts are made in boosting the forensic science. Growing number of white collar crimes has made it necessary for governments to launch formal training and skill building exercises pertaining to forensic investigations. Forensic centers of excellence must be set up at center and state level. The forensic centers of excellence would create a central data repository which shall collect data like spending behavior of an individual including information regarding critical financial transactions.

The office of ombudsman should be digitized.

B. Transparency

Driving transparency is key to sustainable ethical framework. This can be achieved by setting up proper regulations pertaining to financial transactions and the like monitoring their effective enforcement. Mechanism like



Page: 151

self-reporting must be set in place to encourage corporate to stand up to their corporate social responsibility.

C. Encouraging whistle blowers

Some countries like The United States reward those who act as whistle blowers and bring to the knowledge of the governments any illegality committed by individuals or corporate. Taking an inspiration the government too can put in place mechanism that encourage public spirited individuals to report the wrongdoings of any individual or corporation. These steps would instill confidence in people and repose trust in the government.

D. Free press

To the extent free press within a nation, questionable practices shall be questioned.²⁰

E. Adequate regulatory system

A regulatory system that identifies such misconduct and responds effectively will ensure integrity of markets is maintained. Private remedies like civil litigation and self-regulatory regimes by companies along with government sanctions shall have a far reaching effect.

F. Responsible banking

Banks and other financial institutions play an important role in preventing and controlling economic crime Prudent lending practices will prevent opportunity to unscrupulous.

G. International cooperation²¹

The transnational dimension of many economic crimes requires unprecedented multilateral international cooperation, from formal treaties and mutual assistance arrangements to informal liaison between and exchange of law enforcement personnel.



VII. CONCLUSION

Tackling white collar crime has never been nor shall be an easy to do task. The offenders will find new ways of committing the offence. To deal with them a holistic approach involving corporate, individuals, public and governments shall be required. The offence of white collar crime affects the society as a whole. The victim may or may not be one but the harm is generally suffered by the society as a whole. Controlling white collar crimes shall involve a research as to causes and reasons for their non-detection. One of the reasons laws enacted to combat such crimes do not find adequate response is psychological. Our minds are familiar with the conventional modes of commission of crimes and thus are insulate to non-conventional modes of commission of crime. Another reason of slow response towards these crimes is the approach of criminal law towards crimes. Stigma and sanctions- the likelihood of loss of reputation are certain attributes of criminal law that bring deterrence in the offenders. As white collar crimes do not fit in the neatly accepted definitions of crime, these attributes do not apply on them as a result society at large remains ignorant of them. It takes time to realize the seriousness of such offences where intangible property in the sense of economic resources of the community are involved. A different approach shall be required to deal with these offences as such offences are planned in secrecy and committed with sophisticated means.

The solutions presented are no guarantee to prevent economic crime, but shall certainly help reduce the risk of such crime by creating an analogy of web that shall make it difficult for such offences to penetrate. The preventive measures put in place also have to be realistic so as to be achievable and not hindering the growth of the economy. Preventive measures must be so designed so as to go hand in hand with the ease of doing business initiative of the government. As goes the saying that one cannot burn the house to kill the pig so the methods adopted must not kill the economic growth but provide a sustainable investor friendly environment and certainly it shall be challenge to implement the same.

It's the classic white collar crime because it's the old adage the best way to rob a bank is to work for it.

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¹ Stephen General View of Criminal Law of England, p. 3.

² S. 5(1) "No person must have living spouse at the time of marriage."

³ Klare H.J.; "Changing Concepts of Crime and its Treatment", p. 19.

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⁸ *Ibid.*

⁹ *Ibid.*

¹⁰ *Ibid.*

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¹² Bribery and Corruption 2019 India Global Legal Insights available at <https://www.globallegalinsights.com/practice-areas/bribery-and-corruption-laws-and-regulations/india> (last accessed 29/06/2019).

¹³ *Ibid.*

¹⁴ Report of the Committee on Prevention of Corruption Government of India Ministry of Home Affairs available at <http://www.cvc.nic.in> (last accessed on 21/6/2019).

¹⁵ *Supra* at 11.

¹⁶ White Paper by Forensic & Integrity Services, *The changing dynamics of white collar crime in India* available at <https://www.ey.com/> (last accessed on 27/6/2019).

¹⁷ *Ibid.*

¹⁸ *Ibid.*

¹⁹ *Ibid.*

²⁰ Peter Grabosky, *The prevention and control of economic crime*, Ch. 9 p. 155 available at <http://press-files.anu.edu.au/> (last accessed on 22/06/2019).

²¹ *Ibid.*

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