

## WHITE COLLAR CRIMES

Ms.Rashi \*

Mr.Divyam Agarwal \*\*

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### Abstract

The phrase ‘white collar crimes’ refers to that class of crime which is committed by businessmen or any official on a high social status for which the ultimate motivation is financial gains. The paper develops a wholesome approach while dealing with the issue by way of a review of secondary literature. The chronology of developments has been studied to bring out the contemporaneous picture of this criminality. Various theories related to it have been considered so as to get a perspective and the factors which have led to the increase in the rate of these crimes in the world have also been reflected upon. The paper then skims down to the prominence and relevance of this criminality in India. At last, it concludes on the note that if unaddressed, these crimes can prove to be devastating and also suggests combative measures.

### Introduction

White Collar crimes are any financially motivated nonviolent crimes committed by any businessman or government official. Edwin Sutherland formally introduced the concept of white-collar crimes in 1940 defining it as, “a crime committed by a person of respectability and high social status in the course of his occupation.” Sutherland said that the varied types of white-collar crimes consist principally of violation of implied trust and these can be reduced to two categories: misrepresentation of asset values and duplicity in the manipulation of power. After the passing of six decades since Sutherland’s definition of white-collar criminality, the confusion about the meaning and reasonable application of the concept still prevails. D. Nelken challenged the concept of white-collar crimes given by Edwin Sutherland as an “ambiguous concept.” According to him an unclear line exists between white-collar and organized crime. Sutherland proposed

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\* Student, 3<sup>rd</sup> year, BBA LL.B, Symbiosis Law School, Noida.

\*\* Student, 3<sup>rd</sup> year, BA LL.B, Symbiosis Law School, Noida.

this concept on the basis of it falling under the ambit of criminology as it is in the violation of criminal law.<sup>1</sup>

The reasons provided by many criminologists are that a wide variety of terms have been used to characterize activities that could be classified under the concept of white collar crimes. David Friedrichs defined white-collar crimes by using a multistage approach.<sup>2</sup> The first stage is the most general, definitional stage known as the polemical stage. This conception states the common definition of white-collar crimes as the illegal and harmful action of aristocrats for an economic gain that has an important polemical purpose.<sup>3</sup> The second stage, typological stage, organizes patterns of crimes into homogenous categories to facilitate explaining and responding to crime. This stage raises a concern that because the patterns of offenders are so varied; some commentators feel that typologies may distort reality rather than clarifying it. The third stage for defining white collar crimes is operational. At this stage, the purpose of the definition is to provide a point of departure for the comparative critical analysis. This comparative analysis generally compares the purview of white-collar crimes and how it is different from common crimes. However, criminologists like Michalowski and Kramer, also took a scientific approach with comparative analysis for studying and defining white collar crimes.

Eventually, white-collar crimes are most easily defined in negative terms. They are some illegal or harmful activities that are neither street crime nor are the conventional crimes. It is a generic term for illegal activities involving a violation of trust committed by persons of high status directed toward financial advantage or the maintenance of power and privilege.

The publications of Edwin Sutherland not only coined the term 'white collar' but also initiated widespread research and caused a furor amongst criminologists concerning the appropriateness of this concept as a legitimate focus of research theory. Sutherland stated that white-collar crimes are different both legally and socially from the conventional crimes which rose controversies

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<sup>1</sup> Edwin Sutherland, *Is White Collar Crime a Crime*, 133, (10<sup>th</sup>edn., American Sociological Review, 1945).

<sup>2</sup> David Friedrichs, *Trusted Criminals: White Collar Crimes in Contemporary Society*, 8, (4<sup>th</sup>edn., Wadsworth Cengage Learning, 2010).

<sup>3</sup> Richard Quinney, 'The Study of White Collar Crime: Toward a Reorientation in Theory and Research' 55 *Journal of Criminal Law, Criminology and Police Science* 208 (1964).

regarding its criminal appropriateness. These revolve around three main issues-

- Criminologists raised the issue that white-collar crime is a non-legal term which refers to certain criminal acts but it does not specifically name the criminal acts to which it has reference which raised a unanimous question that whether the law violations in question are really crimes?
- The second question that arose was whether the behaviour of the offender involved be equated with conceptual meanings of criminal behaviours since the accused are not criminals before society.
- It was felt that the criminal law failed to make any distinction regarding the social class of the offenders in defining the acts that are usually referred to by white-collar crime. Hence, there was no authentic criminal statistics to estimate the incidence of white-collar crime.

Number of scholars and criminologists centered around five concerns that revolved on Sutherland's use of white-collar concept.

### **Conceptual Ambiguity**

Critics have stated that white collar crimes were ambiguously defined by Sutherland. The issue surrounding the definition was the vague use of term and irrational interpretations that followed.<sup>4</sup> Some authors felt that it was irrelevant to characterize the kinds of behaviour that were the root of the phenomena. David Friedrichs stated, "Perhaps no other area of criminological theory has been more plagued by conceptual confusion than that of white-collar crime."<sup>5</sup>

### **Empirical Ambiguity**

Some criminologists argued that the concept minimally reflected reality as Sutherland's definition underestimated the influence of poverty on other forms of crime. Another criticism raised the issue that the definition only focused on the status of the offender and the location rather than the offense, hence not reflecting the required behaviours accurately. The consequences of empirical

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<sup>4</sup> Gerald Robin, 'White-Collar Crime and Employee Theft' , 20Crime and delinquency 251(1974).

<sup>5</sup> DavidFriedrichs, 'White Collar Crime and the Definitional Quagmire: A Provisional Solution' 3Journal of Human Justice2 (1992).

ambiguity most of the times questioned the nature of white collar offenders.

### **Methodological Ambiguity**

Sutherland in his definition described white-collar crime as the behaviour committed by members of the upper class and was highly criticized for it. It was criticized by Robin that Sutherland focused on all sorts of offenses including workplace theft, fraud, etc.<sup>6</sup>

### **Legal Ambiguity**

Some legal scholars felt that the concept of white collar crimes was too sociological to fall under the scope of law. They explicitly stated that white collar crimes should be defined specifically to include those behaviours that were criminally illegal. Sutherland and many scholars retorted to such a contention by suggesting that conviction is irrelevant in determining whether behaviours constitute white-collar crimes.<sup>7</sup>

### **Policy Ambiguity**

Since the vagueness of definition has been the axiom of criticism, it was also added that Sutherland's definition was purely academic focused and it disconnected between the developing policies responding to white collar crimes. Since time immemorial, criminologists preferred evidence based practices to guide criminal justice policies. The issues with white collar crimes are that its vague and unclear definition makes it extremely difficult for policy makers and practitioners to use criminological information to guide policy development and criminal justice practices.

Though, Sutherland complied with the criticism agreeing that the concept was vague in nature but it was necessarily vague in order to encourage further discussion about it.

### **Historical Background**

The term "white collar crime" echoes a radical transformation in the very definition of crime. It was coined by sociologist and criminologist, Edwin Sutherland, in the year 1939. Though he is

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<sup>6</sup> *Supra* note5 at 258.

<sup>7</sup> GilbertGeis, 'Toward a Delineation of White Collar Offenses', 32Sociological Inquiry 2 (1962).

considered to be the pioneer of this study pertinent to criminology and criminal justice, other academic works helped laying the foundation of this theory.

The growth of the idea can be traced back in the wake of the nineteenth century. In the year 1848, Marx and Engels opined that the powerful and privileged commit crimes as a direct consequence of the capitalist economic system.<sup>8</sup> It was in the beginning of the twentieth century that capitalism was being described as ‘criminogenic’ by Bonger, Dutch Criminologist.

The term “white collar criminaloid” was used by Sutherland in locus to the concept of criminaloid mentioned by E. A. Ross in the book *Sin and Society*. The conception of criminaloid by Ross is as under:

“The immunity enjoyed by the perpetrator of new sins has brought into being a class for which we may coin the term criminaloid. By this we designate such as prosper by flagitious practices which have not yet come under the effective ban of public opinion. Often, indeed, they are guilty in the eyes of the law; but since they are not culpable in the eyes of the public and in their own eyes, their spiritual attitude is not that of the criminal. The lawmaker may make their misdeeds crimes, but, so long as morality stands stock-still in the old tracks, they escape both punishment and ignominy<sup>9</sup>”.

He stressed on the businessmen who indulged in criminal activities under the veil of accountability and responsibility and went on to say that the criminality is “society’s most dangerous foe, more redoubtable by far than the plain criminal, because he sports the livery of virtue and operates on a titanic scale.”<sup>10</sup> His work had a direct impact on the theory propounded by Sutherland. This was followed by a list of the ‘criminals of the upper world’ drawn by Andrew Morris in the year 1935. The list included bankers, contractors, politicians, manufacturers, law enforcement officials, stock brokers and others.

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<sup>8</sup> Andrea Mayr and David Machin, *The Language of Crime and Deviance: An Introduction to Critical Linguistic Analysis in Media and Popular Culture*, 201(A&C Black, 2012).

<sup>9</sup> Edward Ross, *Sin and Society: An Analysis of Latter-day Iniquity*, 48 (Boston, Houghton, Mifflin 1907).

<sup>10</sup> *Supra* note 10 at 59.

These ideas shaped the concept of white collar crime as provided by Sutherland. As already stated, he defined it to be “crime committed by a person of respectability and high social status in the course of his occupation”.<sup>11</sup> He was of the view that crime is committed at all levels irrespective of background and status. He then distinguished these crimes from the traditional ones, which he termed as “blue collar crimes”.

### **Theories of White-Collar Crimes**

There are a number of theories revolving around the evolution of white-collar crimes. This paper shall be dealing with five of them. Each theory suggests different roots of white-collar criminal behaviour such as the society, individuality and culture.

#### Edwin Sutherland’s Differential Association and Social Disorganization

The initial idea was to give a name to crimes or conspiracies committed by members of wealthy classes who use their influence in commerce and industry for personal gain without being held responsible to the law. Sutherland observed that many a times, cases like these were held under civil courts because the subjects were the properties lost. Aggrieved parties were only concerned with their lost properties rather than filing a formal case to penalize the offenders.<sup>12</sup>

Sutherland stated that white collar crimes occur in the business and industry world and in other professions. He also gave an outline to the boundaries of criminal behaviour to be attributed solely to the members of the lower classes of the society. Sutherland proposed that, firstly, white collar crimes are indeed a criminality. He urged that white-collar crimes are violations of criminal law making it fall under the purview of criminology. Secondly, he conceded with the administrative differences between lower class criminality and the white collar ones. Lastly, he acknowledged that criminal behaviour is not limited to members of the lower class, hence making the differential association and social disorganization theories as one of the best theories applicable to white collar crimes.<sup>13</sup>

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<sup>11</sup> *Supra* note 1 at 3.

<sup>12</sup> Larry Seigel, *Criminology: The Core*, 138, (11<sup>th</sup>edn., Cengage Learning, 2011).

<sup>13</sup> Robert Crutchfield and W. Gove, ‘The Family and Juvenile Delinquency’, 23 *Sociological Quarterly* 3(1982).

Sunderland's theory stated that criminal behaviour is not a by-product of poverty but it is a function of learning process. He consented to this claim by stating that acquiring behaviour is neither political nor legal in nature. Criminal behaviour is a product of interaction and socialization and not from low intelligence as highlighted by other criminal theories making lower strata of the society as the offenders of law. He also added that criminal techniques are learned directly or indirectly.<sup>14</sup>

Hence the social disorganization theory states that criminal behaviour is a product of unfavorable conditions in a disorganized zone. These disorganized zones, as defined by Sutherland, have difficult situations that force individuals to break rule and commit crimes. This theory however is more concerned of the psychological rather than social aspects of criminal behaviour.

#### Edward Gross' Corporate Deviance

Edward Gross explained criminal behaviour by focusing at the structure of the organization rather than the society as a whole. According to him, goal plus competition is an unmitigated ground for motivation to break rules and to achieve a goal at any cost hence an organization that puts high remark on their goals have a more tendency to break the law.<sup>15</sup> Moreover, criminal tendencies are strong if the achievements of these goals are the objective and it may be only basis of good performance. Gross explained this concept with the help of for-profit organizations. In such a case, profit is the goal and this may be the only basis for judging one member's achievements. Non-achievement of the expected profit is considered as non-compliance and poor performance. This pressure leads to fraudulent deals made by the members of the organization in order to be labeled with good performance.<sup>16</sup>

In arguendo, the aspects of the organization that affects the occurrence of white-collar crimes include accountability of the members to achieve the common goal, objectivity of performance evaluation and flexibility of the goal. Hence, to reduce the incidence of white-collar crimes in a for-profit organization, Gross stated, the organization should be versatile with their goals.

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<sup>14</sup> Gennaro Vito, *Criminology: Theory, Research and Policy*, 134 (Jones & Barlett Publishers, 2011).

<sup>15</sup> Michael Benson and Sally Simpson, *White-Collar Crime: An Opportunity Perspective* 54, (Routledges 2009).

<sup>16</sup> *Id.*

### **Travis Hirschi's Social Bond Theory**

It was proposed by Hirschi that an individual tends to break the law when he has a weak connection or bond with the society. The elements of criminal behaviour that Hirschi's social bond theory focused was on the basis of attachment to others, commitment to predetermined lines of action, exposure to criminal behaviour and personal belief. This theory was converted into practice by James Lasley who believed that a strong bond with the corporation eliminate the chances of white-collar crimes committed by managers and executives. He devised the following theorems:

- Occurrence of white-collar crimes will be less if there is a strong bond between executives and co-workers.
- A friendly and cooperative environment with a focused vision can lessen white-collar crimes.
- More the employs involved in a corporate activity, the less are white-collar crimes.
- Tendencies of white-collar crimes can be reduced if one is a strong believer in the corporate rules. <sup>17</sup>

This theory was further developed when Hirschi proposed the self-controlled theory. Self-control is achieved in the earlier life and is assumed to remain relatively constant. However, it is argued that these may not be applicable to white-collar crimes since people with low self-control may not be able to qualify for white-collar jobs.

### **Rational Choice Theory**

Jeremy Bentham's writing is the source for the origin of this theory. His approach towards criminal behaviour is purely of rational justification and it also suggests that punishment should be considered equal to the damaged caused. This theory states that self-interest is the sole motivation to commit a crime. If the benefits of the criminal acts are higher than that of the non-criminal act, one might choose to commit the crime. <sup>18</sup>

It is argued by criminologists that rational theory justifies the opportunity perspective of white-collar crimes.<sup>19</sup> Rational choice

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<sup>17</sup> Travis Hirschi, *Causes of Delinquency* (University of California Press ,1969).

<sup>18</sup> Alan Gerber, 'Rational Learning and Partisan Attitudes' 42 *American Journal of Political Science*(1998).

<sup>19</sup> *Supra* note 12 at 62.



theory is one of the few theories that acknowledges the importance of opportunity as a motive for committing a crime.

### **Integrated Theories**

A perfect culture that encourages a crime is the one that promotes competition, materialism, justification and rationalization of criminal acts. This inference was based on an integrated criminal behaviour theory. According to the theory, the structure of a perfect crime opportunity is composed of a possibility to control sanctions and possibilities. According to Coleman's reasoning, white collar crimes are existent in a society that promotes culture of competition and a subculture that directly or indirectly promotes or encourages illegality.<sup>20</sup>

This proposition was negated by Braithwaite, who suggested that white-collar crimes are products of individual egoism trapped in a capitalist society and differential association. His reasoning was a combination of differential association and rational choice theory and by concluding that a criminal act is learned but actual pursuance is dependent on the nature of the opportunity.

### **Causes of White Collar Crimes**

#### Learning theories

These theories involve the assumption that all kinds of behaviour including the criminal one is a resultant of the process of learning.

The theory of differential association by Sutherland explains that a person exhibits criminal behaviour when the people associated with him behave in the same manner and consider it a positive one<sup>21</sup>. The intensity of contact with such people plays a decisive role in the way the learning process is shaped. The process includes the intentions and techniques of deviant behaviour.

On the other hand, the Theory of Operant Conditioning propounded by Skinner claims that any behaviour is learned and is stabilized if there exists no negative consequences, say

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<sup>20</sup> *Supra* note3 at 28.

<sup>21</sup> Available at

<http://www.law.kyushu-u.ac.jp/programs/english/kulrb/kaspar.pdf> accessed on May30, 2014.

punishment. The absence of this fear overweighs the positive reactions of the people associated with one.

### Theory of Anomie

This theory was developed by Robert Merton in the year 1957. According to it, a crime materializes when there is a gap between the goals shared in the society and the legal means required to achieve them<sup>22</sup>. It was also argued that some people might yield to their goals but take up illegal means to achieve the same.

### Techniques of Neutralization and Theory of Subculture

The techniques of neutralization was first dealt by David Matza and Gresham Sykes in the year 1957.<sup>23</sup> The theory of subculture is to an extent on the same lines with the techniques of neutralization. The theory of delinquent subculture declares that delinquent groups have a different set of values and codes as compared to the rest of the society. The theory by Matza and Sykes differs with the one pertaining to subculture in the point that they argued that deviant groups do not have different values and codes but the fact that they justify their violations.

According to Sykes and Matza, there can be five such techniques<sup>24</sup>-

- The denial of responsibility for the offence due to the Act of God (Vis Major) or coincidence.
- The denial of substantial harm.
- The denial of victimization because of the victim's guilt,
- The condemnation of the law enforcement personnel
- The invocation of higher principles.

Both the theories, though different in some regard, help to explain how offenders create a good perception about themselves without realizing the consequences of their acts. They also show how such behaviour can create an environment conducive to the growth of white collar crimes.

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<sup>22</sup> Robert Merton, 'Social Structure and Anomie', 3 American Sociological Review 2 (1938).

<sup>23</sup> Gresham Sykes and David Matza, 'Techniques of Neutralization: A Theory of Delinquency', 22(6) American Sociological Review 6(1957).

<sup>24</sup> *Id.*

## Control Theories

These theories can be considered to be special theories for the fact that they do not ask the reason why a crime was committed rather pinpoint that a crime can never be committed without an opportunity vested in the offender.

The Causes of Delinquency by Travis Hirschi in the year 1969 is one of the renowned control theories. He identified four factors as under<sup>25</sup>-

- Attachment to others
- Commitment to achievement
- Involvement in conventional activities
- Belief in the moral validity of rules

In the year 1990, Hirschi came up with another control theory, namely, the Theory of Self-Control, with Michael Gottfredson. The authors discussed the importance of low self-control in the understanding of crime. They defined crime as “an act of force and fraud undertaken in the pursuit of self-interest.”<sup>26</sup>

The Theory of Control Balance by Title declared that delinquency can be a resultant of too much or too low control. This theory combined with the theory of opportunity structures imply that low external control means more opportunities and if such opportunities are exploited to their fullest after careful cost benefit analysis, the chances of white collar crimes intensify.

## Economic Theory of Crime

Rational choice approach is the basic foundation of this theory. It suggests that white collar crimes are committed because the expected profits are much higher than the probable risks involved. Crimes in the economic context are committed to gain material as well as non-material benefits such as income, reputation, etc. and the risks involved include loss of reputation, profits and others. Risk of prosecution and sentencing is also a major risk pertinent to this area.

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<sup>25</sup> Travis Hirschi, Causes of Delinquency, 20, (University of California Press, 1969).

<sup>26</sup> Michael Gottfredson and Travis Hirschi, A General Theory of Crime, 4,13 (1<sup>st</sup>edn., Stanford University Press 1990).

## **Types of White Collar Crimes**

Since white-collar crimes are non-violent, it is possible that it procures other forms. There are different types of white collar crimes including frauds, anti-trust violations, tax evasion, public corruption, etc. As per the NCFRC, there are approximately 25 listed white collar crimes.<sup>27</sup>

### Fraud

Fraud is considered to be one of the most common type of white collar crime. It is a deception practiced in order to obtain unfair or unlawful gain. Fraud is a felonious crime. It usually takes place when an individual pays for a good but he does not receive what he has paid for.<sup>28</sup> Fraud is a common, general term. It exists in various specific forms.

### Bank Fraud

In cases of bank fraud, a person uses illegal means to obtain money, assets or property owned by a financial institution or to illegally take money from depositors posing as a bank or other financial institution. In many situations, bank fraud is considered to be a criminal offense but it also applies to actions employ a scheme opposed to bank robbery or theft. Hence, bank fraud is considered to be a white-collar crime. In most areas, all types of bank fraud are illegal occur in various forms. The most prominent one being identity theft, where one person uses another person's private identifying information to obtain money usually in the form of loan or credit. The largest case on Identity theft was seen in the case of *U.S v. Cummings*<sup>29</sup> where a help desk worker from a software firm helped steal credit reports on around 30,000 consumers around the country resulting in false charges on credit cards and theft. He was convicted with an imprisonment of fourteen years. Another common bank fraud is fraud involving cheques. Cheque fraud occurs when it has been forged or has been signed on them. This is quite similar to another fraud known as cheque kiting.

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<sup>27</sup> Available at: <http://www.ckfraud.org/whitecollar.html> accessed on 30 May 2015.

<sup>28</sup> Neal Shover and Andrew Hochstetler, *Choosing White Collar Crime*, 212(Cambridge University Press, 2006).

<sup>29</sup> *U.S v. Cummings*, 03-2660, 03-2707, 03-3010.

### Computer and Internet Fraud

Computer and Internet fraud is defined as the unauthorized access of computer and internet facilities. This fraud creates intentional avenues for misinterpretation of facts to initiate loss. This kind of fraud is commonly known as hacking. The people most vulnerable to this fraud are bank users whose information may be used for credit card cramming or for creating fake credit cards. Another type of internet fraud is when the author wants to add is the intentional distribution of dangerous computer viruses. The intention is to misinterpret the computer virus as useful program which can destroy software systems.

### Bankruptcy Fraud

There are three major forms of a bankruptcy fraud. The first one takes place when debtors conceal assets to avoid forfeiture. Maximum of the bankruptcy fraud cases take place because of this form. Secondly, when an individual debtor files an incorrect or incomplete form, the debtor can also be liable for concealing some information about properties up for liquidation.<sup>30</sup>

Bankruptcy fraud often includes other white collar crimes such as money laundering, mortgage fraud, public corruption, etc. It also has criminal charges depending on its jurisdiction.

### **Healthcare Fraud and Insurance Fraud**

These types of frauds are linked. Healthcare fraud is filing false healthcare records and information in order to gain profit while in cases of insurance fraud; a person falsely obtains improper payment from an insurance benefactor. Since these kinds of frauds can be committed via the internet too, a large amount of them fall under the purview of internet fraud.

Insurance Fraud is defined as any act or omission with a view to illegally obtain an insurance benefit. If a person fabricates claims, issues false statements and other dishonest claims for some personal gain, even though he is a rightful claimant of the insurance, it is an act of crime. There are two types of insurance fraud namely 'hard fraud' and 'soft fraud'. Hard fraud is the actual and deliberate destruction of property for collecting

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<sup>30</sup> Frank Bennett , Bennett on Bankruptcy, 336, (10<sup>th</sup>edn.,CCH Canadian Limited, 2008).

insurance money which includes fabrication of accidents, death and other destruction of property. On the other hand, soft fraud occurs when a true policy holder collects the remitted amount and deceits about certain conditions and coverage of the insurance subscription.

It was seen in the case of *Thompson v. U.S*<sup>31</sup> the petitioner torched his home for his insurance money. He also led his 90-year-old mother to the basement and lit the house on fire.

### **Anti-Trust Violations**

Anti-trust violations are defined as a set of rules meant to preserve the competitive process and to ensure that the commodities needed by the consumers are available at their satisfaction.<sup>32</sup> Anti-trust law protects the competitive integrity of the market. It is also termed as the 'Magna Carta of free enterprise'. Anti-trust law protects the free market against trusts and monopolies. Trust is a right to acquire a property under professional relationship with another party who takes the benefit of the property, monopoly, on the other hand is an economic condition wherein an entity will be having commercial advantage to set prices. The objective of anti-trust law is to guard the economy against these anti-competitive practices. Anti-trust law became an international concern because, firstly, major businesses occur at an international level these days, secondly, realization that competition is a high contributing factor for the wealth of the nations.<sup>33</sup>

The most famous case is that of *Standard Oil Co. v. United States*<sup>34</sup>, where Standard Oil dropped its prices by more than half and then bought up several competitors. As their market share rose they lowered their production cost while they were still increasing their profits.

### **Tax Evasion and Money Laundering**

Tax evasion is the non-compliance of tax-paying policies or avoiding payment by illegal means. Some schemes include an individual or corporation intentionally misrepresenting details of

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<sup>31</sup> *Thompson v. U.S*, 523 F.3d 806.

<sup>32</sup> John Shenefield and Irwin Stelzer, *The Antitrust Laws: A Primer*, 110, (4<sup>th</sup>edn., Aei Press, 2001).

<sup>33</sup> *Id.*

<sup>34</sup> *Standard Oil Co. v United States*, 221 U.S. 1 (1911).

income with the motive to pay lower than the actual amount. It is commonly argued that tax evasion should not be limited to individual or occupational white collar crimes.<sup>35</sup> Some other violations include failure to file and report income, false income claims and deductions and other neglect of the tax-paying process. In many countries, tax evasion is a crime that is subjected to serious criminal cases. Tax evaders are likely to be sentenced with huge fines or imprisonment or both.

Money laundering refers to any transaction comprising of financial scheme with the motive of concealing the identity, source and destination of an illegally sum of money. It is observed in three exclusive stages: 1) the illegal activity of getting the sum of money, 2) the launderer keeps the money via a complex scheme of bank transactions and 3) the partner returns the money to the launderer in an obscure way. In the absence of partners, the launderers prefer using offshore accounts in overseas banks to hide the illegal money. Becker defined money laundering as a scheme on how to legitimate a previously illegitimate income. He stated that money laundering are frequently products of income from illegal drugs. The International Monetary Fund acknowledges that money laundering is a threat to financial integrity and social stability.

### **White Collar Crimes in India**

The advancements in science, technology and commerce have made white collar criminality a global phenomenon. The tremendous changes in the structure of the Indian society have effectuated a shift in the core values and philosophies of people. This in turn has revolutionized the nature of crimes in India. White collar crimes have taken India in its stride and are feeding upon the nation at an appalling rate.

The Santhanam Committee report on the Prevention of Corruption shows the position of these crimes in India. It says:

“The advance of technological and scientific development is contributing to the emergence of “mass society” with a large rank and file and a small controlling elite, encouraging the growth of monopolies, the rise of a managerial class and intricate institutional mechanisms. Strict adherence to high standard of ethical behaviour is necessary for the event and honest functioning of the new social, political and economic

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<sup>35</sup> *Supra* Note3 at 133.

processes. The inability of all sections of society to appreciate in full this need results in the emergence and growth of white collar and economic crimes, renders enforcement of the laws, themselves not sufficiently deterrent, more difficult. Tax evasion and avoidance, share pushing, malpractices in the share market and administration of companies, monopolistic controls, usury, under invoicing or over-invoicing, hoarding, profiteering, sub-standard performance of contracts of constructions and supply, evasion of economic laws, bribery and corruption, election offences and malpractices are some examples of white collar crime.”<sup>36</sup>

The Commission broadly classified these crimes into eight subdivisions and recommended the Government of India to incorporate a new chapter in the Indian Penal Code to specifically deal with these offences and supplement them with new provisions, so that these offences might find a prominent place in the general criminal law of the country.<sup>37</sup>

The issue was dealt by the 29<sup>th</sup> Report of the Law Commission of India, 1966. It was considered by the Law Commission and further the proposal was rejected. The Commission observed that:

“Such offences are better left to be dealt with by special and self-contained enactments which supplement the basic criminal Law.”<sup>38</sup>

India does not devote a specific statutory provision to white collar crimes. The Law Commission of India in its 47<sup>th</sup> report on ‘The Trial and Punishment of Social and Economic Offences’ defines white collar crimes as “a crime committed in the course of one’s occupation by a member of the upper class of the society.”<sup>39</sup>

The Supreme Court, in the case of *State of Gujarat v. Mohanlal Jitmalji Porwal and Anr*<sup>40</sup> brought out the differences between the general crimes and white collar crimes. It was of the view that “the offence is committed with cool calculation and deliberate design with an eye on personal profit regardless of the consequence to

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<sup>36</sup> Government of India, *Report of the Commission on the Prevention of Corruption*, 1964.

<sup>37</sup> *Id.*

<sup>38</sup> Law Commission of India, *Proposal to Include Certain Social and Economic Offences in the Indian Penal Code*, 1966, Report no. 29.

<sup>39</sup> Law Commission of India, *The Trial and Punishment of Social and Economic Offences*, 1972, 47<sup>th</sup> Report.

<sup>40</sup> *State of Gujarat v. Mohanlan Jitmalji Porwal and Anr*, AIR1987 SC 1321.



the community. A disregard for the interest of the community can be manifested only at the cost of forfeiting the trust and faith of the community in the system to administer justice in an even handed manner without fear of criticism from the quarters which view white collar crimes with a permissive eye, unmindful of the damage; done to the national economy and national interest.”<sup>41</sup>

In the case of *Ram NarainPoply v. CBI*<sup>42</sup>, the Supreme Court held that white collar crimes are simply cases of private profits at the expense of the public which ultimately leads to economic adversities.

Some of the common types of white collar crimes committed in India take in frauds both banking and accounting related, insider trading, offences under the Prevention of Corruption Act, 1988, infringement of import, export and other foreign exchange laws, adulteration, tax evasion and others.

The reasons which have attributed to the increase in the number of these crimes in India are many. This criminality is a resultant of greed and generally the offenders are financially secure. Duress of any kind, be it financial or physical, leads to these crimes. With the advent of science and technology, political pressure and control and blooming commerce, new avenues for these crimes have opened. One of the major reasons why this criminality is getting a firm hold in the country is that these crimes are difficult to detect as they are committed within the four walls of an office or household.

The legal framework in the country is not so comprehensive to deal with the issue in its entirety, hence, leaving room for these crimes to blossom. Other difficulties which have been recognized while tracing out white collar criminality is that those entrusted to legislate and implement the laws also belong to the same class as that of these collar criminals, due efforts are not being taken to curb this growing menace and also the fact that as these crimes do not impact individuals directly, they receive much less attention than what they are entitled to.

It is incumbent on the judiciary to deal with this issue in a rather robust fashion. The need of the hour is to distinguish between white collar crimes and other seemingly similar crimes and

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<sup>41</sup> *Id.*

<sup>42</sup> *Ram NarainPoply v. CBI*, (2003) Indlaw SC 51.

dispense justice accordingly. The existent enforcement agencies such as the Central Bureau of Investigation, the Directorate of Revenue Intelligence, the Income-tax Department and Customs Department, the Enforcement Directorate and others should be monitored and strengthened to check the distribution of national wealth in an efficient manner. The Central Vigilance Commission should be facilitated in such a way that it keeps a persistent vigil on the workings of the top notch officers. Also, provisions for speedy trial should be made available. The masses should not hesitate from participating in the voice against these crimes because these offences, though do not prima facie include them but are directed towards them. Furthermore, stringent provisions should be available as recourse to these crimes.

### **Combative Measures**

As already discussed, white collar crimes have thrived in the country owing to various reasons. It is a settled fact that this criminality is hard to detect because it is committed by people under the veil of responsibility and power and also within the four walls of a place, be it office or household. Also, illiteracy, ignorance and indifference among the ever going population of the world in totality have simply added to the statistics. Combating these crimes is a challenge but certain measures can be taken up to mitigate their effect.

On the global level, the public, private, governmental and legal entities should first of all endeavor to develop a profound understanding of the implications of white collar crimes. Each one should recognize its duty and perform its part to help address this issue. It is the responsibility of the United Nations to take a proactive stance and work indefatigably towards the detection and prosecution of white collar criminals. If steps are not taken to effectuate the same, severe losses both in terms of economic growth and development will be suffered by the countries especially by the developing ones.

Individually, the governments of the nations can do their bit to strengthen their respective fronts against these crimes. Bolstering their infrastructures forms the bed rock of this process. The governments should be vigilant and keep note of the threat their financial systems, enterprises, people and others suffer from white collar crimes. After identification of the threat, understanding of the white collar environment is essential. The fact that no stringent laws are present to deter the criminals should be

realized and steps should be taken so that the country does not act as a breeding place for these crimes. A good understanding of the environment would lead to a better understanding of the lacunae in the then present system. The loopholes so found can be developed upon to strengthen the framework dealing with these crimes. Adopting stringent policies can be one of the most efficient ways to achieve that end. The governments of various nations should collectively come up to fight this growing menace. Furthermore, it is incumbent on the governments to spread awareness about these crimes among the masses. Keeping a check on the activities of the already convicted criminals can serve as a good idea too.

The governments cannot alone maneuver the hazards of these crimes. Individuals have an equal share in the role to play. They should be conversant with these crimes and their consequences. Also, they should be careful while using new technologies as they can be used to exploit them by the offenders for their personal gains. People should try their best to mitigate the damage caused by white collar crimes by performing their due part proficiently and by taking informed decisions.

### **Conclusion**

White collar crimes are strikingly different from other traditional crimes. This difference does not render them any less in terms of impact and damages caused as compared to others. This criminality is now of a global concern. It is increasing at an alarming rate because of the environment conducive to its growth. Though it cannot be eradicated, it can certainly be reduced. This requires the active efforts of governments, public, legal entities and others.

It has been acknowledged that criminal activity is a sensible choice. Before committing an offence, the criminals conduct what is called a 'cost-benefit analysis'. Certainly, there has been a spurt in these offences. This implies that as a generality, the benefits outweigh the costs involved. Thus, in order to do away with the same, stringent framework should be adopted and severe penalties should be imposed to deter the criminals.

It is high time that the gravity of the matter was considered. It is the responsibility of everyone involved to take steps to curb this criminality. It is an issue which should attract the immediate attention of international communities. If white collar crimes are

not checked, it would act to the detriment of the economic progress of the country and ultimately its over-all development. Even the countries should come up and pool in resources as required creating a strong facade against these crimes.

