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THE ROLE OF WHISTLEBLOWERS IN EXPOSING WHITE-COLLAR CRIMES

AUTHORED BY - SHRUTI MONGA

White-collar crimes, which are often hidden in layers of complexity and deception, can go overlooked for years. However, sometimes all it takes is one brave person to expose the truth. Whistleblowers, who report misconduct within their businesses, are critical in discovering financial fraud and holding offenders accountable. This article will look at the critical role whistleblowers play in exposing white-collar crimes, the challenges they face, and the significance of safeguarding them. Their urging efforts not only assure accountability, but also foster an environment of transparency and ethical behavior in the workplace. In a world filled with fraud, whistleblowers are critical in uncovering wrongdoing. They are the unsung heroes, tirelessly combatting the widespread corruption and deception that undermines a just society.

Meaning and Definition of White Collar Crime

Edwin Hardin Sutherland, an American sociologist and criminologist, introduced the concept of "white-collar crime" in 1939. He defined white-collar crime as "crime committed by a person of respect and high social status in the course of his occupation." Such acts are distinguished by five major components:

It's a crime.

Committed by a person of respect.

Of huge social status.

Occurring as part of their profession or occupation.

Typically includes a breach of trust.

White-collar crime refers to antisocial behavior committed by those in upper social class while working or doing business. For decades, both industrialized and developing countries, including India, have been deeply concerned about these crimes. White-collar crimes, as a subcategory of financial crime, are significant in the context of socioeconomic offenses. They are generally nonviolent and motivated primarily by financial gain. Sutherland introduced the

term "white-collar crime" in a 1939 lecture to the American Sociological Society, defining it as "crime committed by a person of respect and high social status in the course of his occupation."

What is a whistle-blower?

The word "whistleblowing" refers to an employee or individual reporting unethical or unlawful conduct, abuse of power, or misuse of discretion to an appropriate authority. This authority could be inside to the organization, such as a higher authority, or external, such as the government. Individuals who disclose such information are referred to as whistleblowers. The basic goal of whistleblowing is to protect the public interest. Individuals who reveal unlawful activity, corruption, and scams in government or private organizations, on the other hand, are frequently harassed, threatened, and even murdered. As a result, whistleblowers must be protected at all costs.

To address this need, the Central Government passed the Whistleblower Protection Act of 2014, which seeks to protect whistleblowers who report fraud or corruption in the public interest. Despite notification, the provisions of this Act have yet to be implemented for a variety of reasons.

The phrases "whistleblowing" and "whistleblower" are non-technical and lack a general legal definition. A whistleblower is also known as someone who makes a "public interest disclosure" or a "internal witness." Although there is no official definition, various internationally recognized definitions can be used. According to the International Labour Organization (ILO), whistleblowing is "the reporting by employees or former employees of illegal, inconsistent, hazardous, or unethical practices by employees."

Exposing the Truth

Whistleblowing has a significant impact on the detection of white-collar crime. Consider the instance of Enron, one of the most significant corporate scandals in history. Whistleblowers within the organization initially expressed concerns about accounting irregularities and financial mismanagement. Their actions eventually contributed to the energy giant's demise and revealed extensive fraud that had gone unnoticed for years.

Similarly, whistleblowers were important in exposing the Wells Fargo fake accounts scandal, in which staff opened millions of fraudulent accounts to satisfy aggressive sales quotas. The courageous actions of these whistleblowers exposed the fraudulent practices, resulting in regulatory scrutiny, large fines, and substantial reputational harm for the bank.

Impact of White-Collar Crime

White-collar crime is one of the world's fastest-growing categories of crime, with nearly every category seeing an increase in recent years. Although largely nonviolent, white-collar crime has serious effects. It entails a variety of legal infractions committed by individuals or groups in positions of power, with serious consequences for society. White-collar crime, particularly in impoverished and emerging nations, contributes to poor socioeconomic conditions because there are few prospects for upward social and economic mobility.

Sociologists say that people are products of their surroundings, making it difficult to discourage young people from choosing a life of crime when many of their classmates commit white-collar crimes. These crimes decrease available resources, preventing the adoption and implementation of effective social programs and affecting economic growth and development.

For example, an institution experiencing a widely publicized security breach in its computer system may struggle to regain client trust, especially if the breach involves the loss of personal financial information. This decline in trust can be devastating for businesses that serve as major employers in a city or region, leading to significant economic repercussions.

White-collar crime also affects national and regional stability. Poor and developing nations rely on public and private organizations to invest and grow their economies, creating jobs and generating tax revenue. When white-collar crime increases, particularly targeting private organizations, these entities reduce investments, hire fewer people, and generate less tax revenue. In extreme cases, businesses targeted by white-collar crime may be forced out of operation, reducing the likelihood of similar businesses investing in the region. This shift in economic power can lead to greater influence for warlords and criminal elements, who become primary sources of employment opportunities.

LANDMARK CASES RELATING TO WHITE-COLLAR CRIMES

- Harshad Mehta Scam

The case of *Harshad Mehta* is one of the important cases of money laundering. In 1992, Harshad Mehta, a leading stock broker borrowed money from the bank and used it to artificially hike the price of stocks. This manipulation led to the highest crash of the stock market at that time. He carefully used the weakness of the system and made over 5000 crores. Due prevent transactions of this nature, the government amended the SEBI regulations.⁴

- Satyam Computer Services Scam

In the case of *Satyam Computer Services v. Directorate of Enforcement*⁵, The Chairman of Satyam Computers confessed that he falsified the financial statements of the company by overstating the assets and understating the liabilities to increase the share price of the company. Mr. Ramalinga Raju, the chairman of the company, and his associates were convicted for fraudulent and unfair trade practices and insider trading.

- Nirav Modi Case

Nirav Modi one of the richest persons in India and a Jeweller with the help of some officials of Punjab National Bank fraudulently obtained a Letter of Understanding without abiding to the procedure and misappropriated the funds for other purposes and defrauded the Punjab National Bank. This bank incurred a huge loss; it is said to be the largest banking fraud ever in India.

- *Abhay Singh Chautala Case*

In the case of *Abhay Singh Chautala v. C.B.I.*⁶, the two accused were charged and tried separately for an offence under Section 13(1)(e) and 13(2) of the Prevention of Corruption Act, 1988 read with Section 109 of the Penal Code, 1860. They were alleged to have accumulated disproportionate wealth according to their salary while servings as members of the legislative assembly. However, when the Central Bureau of investigation discovered that the father of the appellant had acquired large holdings as had the appellants. Therefore, the punishment under section 19of the Prevention of Corruption act, 1988 was held invalid.

The Importance of the Whistleblowing System

A growing number of companies across various industries have recognized the critical role whistleblowers play in preventing white-collar crimes. For instance, after the Dieselgate

scandal, Volkswagen took significant steps to improve their whistleblowing system and corporate culture.

Non-profit organizations focused on combating wildlife trafficking are also beginning to see the value of whistleblowers in their efforts. These organizations are encouraging companies within the wildlife industry to implement whistleblowing systems. Employees at captive facilities, pet shops, and related supply stores can often determine whether an animal was bred in captivity or taken from the wild and illegally integrated into legitimate supply chains. A whistleblowing system allows them to report their concerns safely and securely.

Reporting illegal activities can be a difficult decision for individuals due to potential repercussions such as ostracism, termination, or threats. Implementing a whistleblowing system demonstrates a company's commitment to transparency and provides a secure way for whistleblowers to raise their concerns.

Integrity Asia, with two decades of experience in compliance, offers whistleblowing services to clients from various industries. Their Canary Whistleblowing System combines multiple reporting channels centralized on a web application, enhancing accessibility while ensuring the anonymity of the reporter. If your company is ready to take whistleblowing systems seriously, contact us today!

Whistleblowers play a crucial role in exposing white-collar crimes, which are often non-violent offenses committed for financial gain or personal advantage. Here's how they make a difference:

- **Uncovering Hidden Wrongdoing:** White-collar crimes are often complex and cleverly concealed. Whistleblowers, typically insiders with access to critical information, can expose these hidden activities, such as accounting fraud, bribery, or market manipulation.
- **Triggering Investigations and Enforcement:** By reporting wrongdoing, whistleblowers initiate investigations by law enforcement agencies and regulatory bodies, which can lead to prosecutions, fines, and corrective actions.
- **Detering Future Crimes:** Exposing white-collar crimes can have a significant deterrent effect. Companies become more cautious about engaging in unethical practices, knowing that whistleblowers could bring them to light.

Real-World Examples:

- **Enron Scandal:** Sherron Watkins, an Enron employee, exposed the company's fraudulent accounting practices, leading to its collapse and the enactment of the Sarbanes-Oxley Act, which strengthened corporate governance.
- **Volkswagen Emissions Scandal:** Whistleblowers within Volkswagen revealed the company's manipulation of emissions data in diesel vehicles, resulting in a major environmental scandal and substantial fines.

Challenges Faced by Whistleblowers

Whistleblowers face significant challenges despite legal protections, which often appear symbolic while retribution remains common. To address this, a robust system must be established where whistleblowers can trust that they will be shielded from criminal or civil liability. Effective whistleblowing systems require laws that protect whistleblowers from retaliation, punishment, and discrimination by organizations, employers, and others.

Key Issues:

1. **Inadequate Legal Definitions:** The Whistleblowers Protection Act, 2014 (WPA) lacks clear definitions for key terms such as 'whistleblowing,' 'victimization,' and 'retaliation.' This vagueness makes the Act susceptible to manipulation.
2. **Anonymity Concerns:** The WPA, 2014 does not allow anonymous complaints, which can deter potential whistleblowers who fear for their safety and livelihood. This contrasts with the U.S. system, which permits complete anonymity and rewards through legal practitioners.
3. **Protection from Retaliation:** The WPA, 2014 does not provide strong protections against victimization. Whistleblowers often face severe consequences such as ostracism, termination, and threats.
4. **Lack of Rewards:** Unlike American laws, the WPA, 2014 does not offer rewards for whistleblowers, which could discourage reporting of wrongdoing.
5. **Public Interest Disclosure:** The Act does not clearly define what constitutes a valid 'public interest disclosure,' making it difficult to protect whistleblowers adequately.
6. **Implementation and Enforcement:** Although the WPA was notified in 2014, its provisions have not been fully implemented. The Whistle Blowers Protection (Amendment) Bill, 2015, which aims to amend the WPA, has been pending in Rajya Sabha for years, showing governmental reluctance.

7. **Prohibited Categories:** The Amendment Bill of 2015 restricts disclosures related to ten categories, including national security and economic interests, limiting the scope for reporting corruption and wrongdoing.
8. **Technological Adaptations:** The WPA, 2014 does not accommodate anonymous e-disclosures, which are crucial in the digital age where platforms like Wikileaks have highlighted the importance of such mechanisms.
9. **Sector Coverage:** The WPA, 2014 applies primarily to public sector employees and does not adequately cover private sector employees, despite numerous corporate scandals. Extending whistleblower protections to the private sector is essential for comprehensive reform.

Conclusion:

Addressing these challenges requires a commitment to transparency, accountability, and robust legal protections for whistleblowers. Strengthening the WPA to include clear definitions, ensure anonymity, provide rewards, and expand coverage to the private sector will create a safer environment for whistleblowers to report misconduct without fear of retribution. The implementation of these measures is vital for fostering a culture of integrity and trust within both public and private organizations.