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Avinash Kumar



Avinash Kumar has completed his Ph.D. in International Investment Law from the Dept. of Law & Governance, Central University of South Bihar. His research work is on "International Investment Agreement and State's right to regulate Foreign Investment." He qualified UGC-NET and has been selected for the prestigious ICSSR Doctoral Fellowship. He is an alumnus of the Faculty of Law, University of Delhi. Formerly he has been elected as Students Union President of Law Centre-1, University of Delhi. Moreover, he completed his LL.M. from the University of Delhi (2014-16), dissertation on "Cross-border Merger & Acquisition"; LL.B. from the University of Delhi (2011-14), and B.A. (Hons.) from Maharaja Agrasen College, University of Delhi. He has also obtained P.G. Diploma in IPR from the Indian Society of International Law, New Delhi. He has qualified UGC – NET examination and has been awarded ICSSR – Doctoral Fellowship. He has published six-plus articles and presented 9 plus papers in national and international seminars/conferences. He participated in several workshops on research methodology and teaching and learning.

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WHITE COLLAR CRIMES: DECEPTIVE PRACTICES IN CORPORATE SPHERES

AUTHORED BY - ANAGHA MOHAN & DEVENDHU A P

ABSTRACT

There is no one cause of crime rather, it is the result of a confluence of factors, including the norms and values of the community in which it takes place. Hence in the current technologically-driven society, there is a greater emphasis on white-collar crimes. In the 18th century, white-collar crimes began to develop, and as a result of industrialization and colonization, their scope expanded to encompass the entire world. The economic growth experienced in the past twenty years has made it easier for them to increase in number. Crimes like tax dodging, money laundering, and black market cash flow have a big effect on the economy. They cause widespread money troubles, poverty, job loss slow growth, and rising prices. This creates an uneven economy and made-up financial chaos, which changes how much things cost and shakes up the whole economy. This article aims to look at white collar crimes in their past and social setting. It will focus on well-known cases and pay special attention to corporate spying and money laundering.

INTRODUCTION

As criminals find it easier to commit crimes and get big payoffs, they've grown greedier. This has led to a drop in the average age of these wrongdoers. The increase in white-collar offenses shows the country is heading in a darker direction. White-collar crime covers a range of money-related illegal acts like fraud, bribery, embezzlement, and money laundering. Companies and governments carry out these crimes. These offenses don't involve physical violence and need careful planning. White-collar crime law is a special area of legal work where lawyers stand for clients in investigations and both civil and criminal court cases. These clients often come from influential sectors such as business, politics, major corporations, and financial institutions. Lawyers must possess a comprehensive comprehension of their customers' company activities and a profound expertise in government rules. Their role involves offering advice on adhering to regulations and managing investigations, with the goal of devising ways to avoid legal penalties. This typically requires weighing the decision to disclose potentially harmful material

or relinquish legal privileges. Criminal acts, which are designated by the state, present substantial hazards to both society and individuals. Crimes are classified as "blue-collar crimes" or "white-collar crimes" depending on their characteristics, goals, and outcomes. In exchange to the white-collar crimes, which are non-violent felonies curated by those in positions of authority for the sake of profit making, blue-collar crimes entail the intentional destruction of physical property. The legal implications and far-reaching societal effects of white-collar crimes are discussed in this article.

UNDERSTANDING THE REALM OF WHITE COLLAR CRIMES

White collar crime refers to financially motivated, nonviolent offenses that are carried out in the office settings of government professionals, businesses, or individuals for personal monetary gains. This underscores the worldwide escalation in white collar crime rates, with India experiencing a particularly noteworthy surge since 2019. It is vital to comprehend that the characteristics and varieties of white collar offenses in order to effectively combat this trend.

In the digital age, it is essential for organizations, individuals, and law enforcement agencies to have a comprehensive understanding of white-collar crime and its different forms. Below are several prevalent forms of white-collar offenses.

- **Embezzlement:** Embezzlement is a type of white-collar crime in which an individual unlawfully appropriates assets that have been entrusted to them for reasons other than what was intended. It emphasizes that embezzlers acquire assets lawfully but exploit them for personal gain, thereby violating their fiduciary obligations.
- **Insider trading:** Insider trading is the practice of trading a company's stocks or assets by persons who have inside access to the confidential information about the firm. This type of trading is considered inappropriate as it provides an unfair trading space.
- **Fraud:** Fraud initiates the employment of misleading tactics and deceitful behaviors by individuals to obtain personal or financial benefits. It is crucial for financial institutions to religiously incorporate measures to detect and prevent such fraudulent acts in order to avoid economic harm.
- **The Ponzi scheme:** This is an investment crime that was instigated by Charles Ponzi, this entices participants by promising substantial returns in exchange for utilizing capital provided by the new investors. However, the deceptive plan collapses when the

scammer fails to attract enough new clients to compensate for the current ones, leading to significant financial losses for many investors.

- **Corporate espionage:** This transpires when one organization appropriates another's trade secrets, intellectual property, or confidential data for its own gain; this illicit activity results in financial losses and unjust competition.
- **Credit Card fraud:** Credit card frauds transpire when an individual unlawfully obtains valuable merchandise using the credit card of another, thereby perpetrating a criminal offense against the cardholder.

EXPLORING THE HISTORICAL CONTEXT AND SOCIAL DYNAMICS OF WHITE COLLAR OFFENCES

Since the nineteenth century, a distinct subfield of criminal law known as the Criminal Law of Economics has existed, combining legal and economic disciplines. Legal experts, accountants, bankers, and credit intermediary agents are examples of "deviant" professionals who are required to conduct these violations. These individuals, whom state and government financial supervisory authorities frequently refer to as "criminals in the shadows," are entrusted with the execution of reporting duties pertaining to dubious economic activities, specifically those that violate Anti-Money Laundering and Anti-Corruption regulations.

In 1939, Professor Edwin Hardin Sutherland used the term "white-collar crime" for the first time. He was also a significant contributor to the development of criminal laws of economics, which were aimed at explaining the connection between financial transactions and particular persons who are prone to committing serious economic offenses. In order to emphasize the significance of comprehending the financial transactions at hand, his convictions sought to transfer attention from unlawful objects to the perpetrators.

The social location or pattern of white collar offenses over time and space, within particular groups of offenders, victims, and transaction categories, is the focus of research on these offenses. This research has the potential to be utilized in various forms of criminal activity, including securities fraud, tax fraud, and bribery of public officials. Political corruption has a notable degree of regional diversity, but tax fraud is comparatively less influenced by regional factors. The occurrence of price-fixing may exhibit substantial variations over time and across different industries, whereas the incidence of securities fraud tends to remain relatively

constant. Individual traits may serve as important indicators of theft or involvement in a confidence scam, but may not be relevant in forecasting an individual's involvement in price-fixing or bribery.

The literature has largely neglected to investigate the theoretical concerns that are implied by the interest in social location. Critical global efforts have been made to establish a historical understanding of the white collar crime. For instance, Edelhertz proposed that the modernization of the social and economic landscape, including the blatant disregard of marketing safeguards, the emergence of impersonal transactional settings, and the rise in economic interactions among unfamiliar individuals without direct contact, has led to a higher incidence of white collar crime and the emergence of illegal activities.

The increasing worldwide interconnection has presented new obstacles in the fight against white-collar crime, namely in the case of money laundering. Criminals frequently engage in activities that span multiple countries, taking advantage of loopholes in regulations and seeking refuge in governments having comparatively lenient enforcement. In order to effectively address these criminal activities, nations need to fuel up their legal systems, align rules, and improve global collaboration by means of exchanging information, establishing extradition agreements, and conducting joint investigations. Money laundering, a long-standing obstacle, has adapted to the evolving era by employing intricate networks of dummy corporations, offshore bank accounts, and digital currencies to cleanse funds obtained via illicit acts. The fact that this issue involves multiple countries requires international collaboration in order to successfully identify and prevent it.¹

CHARACTERISTICS OF WHITE COLLAR CRIMES

White-collar criminals employ deception and concealment to achieve illicit gains, such as securing government contracts using false assertions, rather than resorting to physical force or aggression. This encompasses fraudulent assertions made in exchange for monetary compensation, assets, or rendered services.

White collar crime is a non-violent form of criminal activity that focuses on financial deception

¹ The Historical and Legal Evolution of White Collar Crime, available at <https://www.sanctionsscanner.com/blog/the-historical-and-legal-evolution-of-white-collar-crime-536>

rather than bodily harm. In many cases, the victims of white collar crimes bear the consequences of the offenses without recognizing the assailant. These offenses involve the misuse of trust and authority, such as when public officials accept bribes or corporate executives manipulate prices to eliminate competitors. White-collar crime is typically more difficult to detect than other types of crime because of the possibility of losses that are not obvious, as well as sophisticated plans and cover-ups. This makes it more difficult to detect and bring charges against it.

MODELING AND ANALYSIS OF CRIMES

1. CORPORATE ESPIONAGE: THE EFFECT OF CORPORATE RIVALRY

Corporate espionage refers to the act of wrongfully acquiring confidential information, such as proprietary knowledge, from a single organization and secretly transferring it to another. Usually, the culprits receive payment for the act of stealing. Nevertheless, dissatisfied employees or former employees have the potential to disclose confidential information to other companies as a means of seeking retribution against a corporation they believe has treated them unfairly. Corporate espionage is a meticulously orchestrated operation in which individuals, typically unfaithful workers, covertly transfer confidential information from a firm in order to initially get access to data and subsequently establish advanced control. This can be accomplished by gaining access to premises through the use of counterfeit identification cards or by conducting searches for information on computers, hard drives, and physical documents. The repercussions of engaging in such perilous actions are significant, as they can result in being apprehended. An instance of corporate espionage might be observed in the current petroleum ministry case.²

It encompasses a wide range of activities, including the theft of new projects, client lists, research data, and marketing plans. The motivations behind espionage can be numerous, but typically involves seeking a competitive edge over the rivals in those respective marketplaces. The disclosure of confidential information can have severe consequences, and the unauthorized use of such information can have a detrimental impact on an organization's effectiveness. Malicious intentions can result in a corporation entering a severe downturn, leading to a loss of more than 50% in intended revenue.

² Omid Nodoushani, Patricia A Nodoushani, Industrial Espionage: The Dark Side of the Digital Age, Competitiveness Review: An International Business Journal, Vol.12 Iss:2,2002, available at <http://www.ijmdrr.com/admin/downloads/300720155.pdf>

Espionage sometimes entails the collaboration of numerous individuals, since sensitive information is concealed in covert locations and made exclusively accessible to authorized personnel. Corporate espionage can have serious effects, resulting in substantial financial losses for the targeted organization. Some of the most renowned cases include:

- The legal case of *Gillette v Steven Louis Davis* which occurred in 1997.

Subcontractor and Gillette employee Steven Louis Davis was found guilty of trade secret theft in 1997. Davis illegally transmitted to competitors via email and facsimile a novel shaving system that had been developed by Gillette at a cost of \$750 million. Davis, a process control engineer employed for Wright Industries, Inc., was recruited by Gillette to aid in the advancement of the system. Davis' espionage activities were allegedly driven by his discontent with his working conditions, concerns about the security of his job, and resentment against his boss. Gillette notified the FBI, which is the primary federal law enforcement agency, responsible for domestic intelligence and security in the United States with Davis ultimately accused of committing wire fraud and stealing trade secrets.

- The case of *Avery Dennison Corp v. Four Pillars Enterprises Ltd.* occurred in 1999.

Four Pillars, a Taiwanese maker of pressure-sensitive products, and Avery Dennison, a US manufacturer of adhesive labels, had initially planned an Asian joint venture. Nevertheless, their relationship turned hostile. An informant enabled Four Pillars to obtain trade secrets from Avery Dennison, thereby providing the organization with competitive intelligence. From 1989 until 1997, Four Pillars clandestinely obtained proprietary information until an Avery Dennison employee disclosed that Four Pillars was receiving adhesive formulae from Avery Dennison. As a consequence, Four Pillars faced an FBI investigation, which ultimately led to the imposition of both civil and criminal sanctions. The matter has resulted in multiple civil lawsuits and a criminal trial. Due to Four Pillars Enterprises Ltd.'s misappropriation of trade secrets, Avery Dennison Corp. was awarded \$40 million in damages in a civil suit.

2. MONEY LAUNDERING AND ITS INVESTIGATIVE CHALLENGES

Money laundering is the act of concealing unlawfully acquired funds by transforming them into legal currency. The Global Programme of the United Nations Office on Drugs and Crime (UNODC) promotes the development of policies by States to address the problems

of money-laundering and terrorism funding. It also monitors these issues, develops public awareness, and collaborates with the United Nations and other international organizations to coordinate actions. This approach enables criminals to benefit from gains without jeopardizing the origin of those profits.

Money laundering is a three-step procedure that entails transferring cash away from any direct connection to a criminal activity, obscuring the money trail to evade detection, and incorporating the monies into the legitimate financial system. Nevertheless, it is possible for cases to lack any of the three steps, and certain stages may be merged or repeated numerous times. As one illustration, the money obtained by selling drugs is split into smaller sums, then deposited by individuals acting as intermediaries, and finally transferred as compensation for services to a fictitious company. This process combines the steps of placing and layering the funds into one stage. Financial institutions employ an anti-money laundering (AML) investigation, which is a multistage procedure, to identify, thwart, and counteract illicit activities such as money laundering and the financing of terrorism, among others. The process entails closely examining financial transactions, client behavior, and data in order to detect suspicious trends and probable illegal funding. The primary objective is to halt criminal networks, guarantee compliance with anti-money laundering (AML) legislation, and safeguard the integrity of the financial system.

- In the case of *Arun Kumar Mishra v. Directorate of Enforcement* (2015) five individuals caused the Punjab National Bank (PNB) to lose a substantial amount of money by opening a fictitious account and using the funds for personal benefit. The money laundering case was rejected due to its lack of applicability to the Prevention of Corruption Act. Nevertheless, the court declared that if the petitioner was found guilty of money laundering, the Enforcement Directorate would have the authority to initiate a fresh legal proceeding based on the relevant law in place at that time.

Recognition and Preventative Approaches against White-Collar Crimes

In order to detect prospective threats and avert the damage they cause to the integrity of an organization, proactive strategies are necessary to combat the complexity of white collar crime. Several efficacious techniques include:

- Preventing internal offenses requires regular worker education and training on fraud strategies and white-collar crimes. Consistent training programs enable employees to identify potential hazards and proactively avoid potential security breaches.
- Thorough audits and strict internal controls guarantee clear and open financial processes, discouraging prospective white-collar offenders and offering vital understanding into vulnerable areas that could be taken advantage of.
- Scam activities must be detected with the assistance of sophisticated data analytics and AI technologies, which can immediately identify suspicious transactions and alert them for intervention.
- Organizations can establish whistleblower programs to enable workers and other stakeholders to report illicit conduct without revealing their identities. This helps to identify internal white-collar crimes more effectively.

White Collar Warfare: The Indian Scenario

Protecting India against unauthorized trading

The act of selling or purchasing securities by individuals who have privileged information about a company, such as promoters, directors, employees, or directors, is referred to as insider trading or insider dealing. The prohibition of firms from purchasing their own shares on the secondary market by SEBI is intended to deter such activities and encourage equitable trading for common investors. Insider trading refers to the act of purchasing, selling, or exchanging shares or securities based on undisclosed price-sensitive information (UPSI) that potentially impact the stock price that has not yet been made public. Here an insider according to SEBI, refers to an individual who possesses information that might significantly impact the price of a business's shares or securities. This person must have been affiliated with the company for a minimum of six months before to engaging in insider trading. Section 15G of the SEBI Act, 1992 specifies the consequences for breaching laws, which include a penalty of 10 lakhs. This penalty can be escalated to 25 crore rupees or three times the profit obtained from insider trading activities.

The court in the case of *V.K. Kaul v. SEBI*³ employed circumstantial evidence to ascertain

³ Shreya Gupta, Case Analysis of V.K.Kaul Vs. Adjudicating Officer, available at <https://taxguru.in/sebi/case-analysis-v-k-kaul-vs-adjudicating-officer-sat.html>

whether Mr. Kaul had contravened the Regulations pertaining to insider trading. Proving insider trading cases is challenging because of the numerous transactions involved and the lack of recorded documentation. Important sources of evidence include factors such as the interplay between parties, the origins of insider information, the participation of corporate entities, the governance and administration of the company, the Articles of Association, and the frequency of communication. The court emphasized the significance of a rigorous standard of preponderance of probability in cases involving insiders.

The court's ruling in the case of *Rakesh Agrawal v. SEBI*⁴ established that motive plays a vital role in evaluating culpability in situations of insider trading. If an individual who has access to privileged information engages in stocks trading while in possession of an Unsolicited Purchase Order (UPSI), they may be acquitted if they can demonstrate that their intention was not to maximize their financial gain or personal benefits. Nevertheless, this approach poses difficulties, particularly in circumstances when decisions are predominantly based on circumstantial evidence. Regulation 4 permits the trading of shares between individuals who possess the same Unpublished Price Sensitive Information (UPSI) outside of the market. This trading activity is allowed as long as it does not have any impact on market conditions or investors, particularly in cases where the individuals involved have significant influence or are in the process of merging or demerging. This interpretation could potentially result in numerous insiders circumventing the regulations by asserting that they made the decision in the best interest of the company or without maximizing profits. Hence, it is advisable that regulatory frameworks incorporate provisions that specify the manner in which mens rea and the nature of evidence employed in insider trading cases are applicable.

INSTANCES OF WHITE COLLAR CRIMES IN INDIA:

1. Sathyam Scandal

In 2009, the Satyam incident, which was one of the biggest accounting frauds in India, came to light when B Ramalingam Raju of Satyam Computers confessed to falsifying his financial records. This admission was published in the Times of India. The fourteen thousand crore fraud escalated with the recession. Raju and his accomplices were apprehended by SEBI, who deemed them accountable for committing financial fraud and engaging in insider trading. They were prohibited from accessing the securities markets for a duration of 14 years and were

⁴ Rakesh Agrawal v. SEBI, 2003 SCC OnLine SAT 38

mandated to make a payment of 3000 crore rupees within a period of 45 days. The scandal worsened the country's economic predicament.

2. Saradha Chit Fund Case

The Bengali chit fund Saradha Chit Fund was a fraudulent Ponzi scheme that resulted in the suicide of hundreds of individuals from lower socioeconomic backgrounds. Motivating rural investors with the promise of exorbitant returns and a religious undertone via "Saradha," the spouse of Ramakrishna Paramahansa, a revered saint in Bengal, Sudipto Sen enticed them to participate in the scheme. One million investors contributed 300 billion rupees to the scheme, which also secured the support of prominent celebrities in the film industry who were credulous. Sen allocated the funds towards television news programs, regional films, and local football clubs. Additionally, he generously financed influential political figures in order to suppress any grievances from investors. Saradha formed more than 200 entities in order to create shell organizations and divert the attention of SBI from its investigation. SEBI banned Sen and his partners from the stock market until all of their money was returned. CM Mamata Banerjee established a relief fund for low-income depositors who have been wronged, while a Special probe Team (SIT) initiated an ongoing probe.

3. Harshad Mehta Scam

In Bombay, the merchant and stockbroker implicated in the white-collar crime Harshad Mehta Scam is well-known. Mehta was under suspicion for engaging in stock price manipulation, resulting in a significant surge in share prices. He purportedly amassed more than 5000 crore rupees through deceit. Financial writer Sucheta Dalal uncovered the deception, deeming it more unethical than illegal. As a result of the fraud, the SEBI revised market laws and regulations, and Mehta's endeavors prompted panic selling.⁵

RECENT DEVELOPMENT IN WHITE COLLAR CRIMES

The case of *Rahul Dinesh Surana* versus *The Senior Assistant Director of the Serious Fraud Investigation Office*(2022)⁶

Rahul Dinesh Surana, an accused person in a bank fraud case totaling 10,000 crore implicating

⁵ Paras Kaushik, Yashika Gandhi, Himanshu Kumar, White Collar Crimes in India : A Thorough Study, e-ISSN: 2582-5208 Volume:04,Issue:12, December-2022

⁶ Hong kong money laundering case available at <https://indiankanoon.org/search/?formInput=surana%20industries&pagenum=6>

Surana Group, was denied bail by the Madras High Court, presided over by Justice AD Jagadish Chandira. The court determined that the act of diverting public funds through deceitful means to defraud monetary institutions is a meticulously planned and deliberate crime, in contrast to a spontaneous provocation. The court has determined that there is insufficient evidence to suggest that the accused is innocent of the crimes in question and that it is improbable for them to conduct these crimes when released on bail, as outlined in the 2013, Companies Act. As white collar crimes are committed by knowledgeable and influential individuals who are expected to set an ideal example, the bench further noted that they are detrimental to society. For instance, misappropriation of hundreds of crores of rupees provided as bank loans is an example of such a crime.

HONG KONG MONEY LAUNDERING CASE (2024)

Seven people have been taken into custody by Hong Kong customs officers in connection with the biggest case of money laundering in the region, which involves almost \$14 billion (\$1.8 billion) in Hong Kong dollars. The seven individuals residing locally were members of a vast transnational syndicate that utilized fake firms and savings accounts to transfer substantial amounts of money from foreign countries to Hong Kong, disguising their activities as international trading enterprises. A single account received a total of a hundred million Hong Kong dollars in one day. The amount of 2.9 billion Hong Kong dollars (\$371 million) was believed to be connected to a fraudulent case related to a mobile application in India. Several of the apprehended persons were Hong Kong residents who were not of Chinese nationality. Authorities suspect that the syndicate received money transfers from India under the pretense of exporting electrical devices, jewels, gemstones, and precious metals.⁷

CONCLUSION

Since "white-collar crime" is not specifically defined in law, tougher regulations are necessary to root it out and bring society back to its pre-technological state of fairness, equity, and justice. As an emerging economy, India is confronted with a substantial peril in the form of escalating online fraud. In order to address this issue, it is essential for investigating officers to receive training that enables them to accurately identify and effectively prosecute individuals who have

⁷ Seven held by HK customs for \$1.8 bn money laundering case linked to India, available at https://www.business-standard.com/world-news/7-held-by-hk-customs-for-1-8-bn-money-laundering-case-linked-to-india-124021600694_1.html

committed offenses. The government should implement rigorous regulations to deter such criminal activities and develop a system that imposes severe penalties on offenders and expedites the resolution of the majority of cases. Since these criminals are representatives of society at large, this will aid in keeping the system open and honest while destroying faith in it. The evaluation of the performance of investigating officials is essential to uphold transparency and mitigate any additional harm to the economy. In order to accelerate the process, it is imperative to establish fast track courts and tribunals across the entire country, endowed with the power to impose penalties or imprisonment on anyone found guilty. This measure would effectively decrease the incidence of white collar crimes. The acts of officials who hold crucial positions should be monitored and cross-checked by the Vigilance Commission in order to ensure that the system in question remains transparent. Because white-collar crimes can happen anywhere, from mom-and-pop shops to Fortune 500 companies, it is essential that the public be made aware of them through print and digital media. Disseminating information regarding legal recourse for victims is crucial. These measures will undoubtedly aid in reducing the current surge in crime rates.

