

TREND ANALYSIS ON WHITE COLLAR CRIME IN DEFENCE

¹CHS .VIKAS

¹ STUDENT, FINAL YEAR, BA. LLB (HONS), SAVEETHA SCHOOL OF LAW, SAVEETHA INSTITUTE OF MEDICAL AND TECHNICAL SCIENCES, SAVEETHA UNIVERSITY, CHENNAI-77, TAMILNADU, INDIA.

²DR.A.SREELATHA

² PROFESSOR, SAVEETHA SCHOOL OF LAW, SAVEETHA INSTITUTE OF MEDICAL AND TECHNICAL SCIENCES, SAVEETHA UNIVERSITY, CHENNAI-77, TAMILNADU, INDIA.

²annamanenisreeltaha.ssl@saveetha.com

ABSTRACT

The law of crime has been as old as the civilisation itself. There was no criminal law in uncivilized society. "A tooth for a tooth, an eye for an eye, a life for a life" was the forerunner of criminal justice. As the society developed crime also increased. Now with the advancement of science and technology newer form of criminality has arisen known as white collar crimes. White collar crime typically refer to crimes committed by business people, entrepreneurs, public officials and professionals through deception or fraud as opposed to traditional blue collar crimes which tend to involve violence. The notion of white collar crime was introduced in the field of criminology by Prof. Edwin H. Sutherland in 1939. The main categories of white collar crimes are corruption and bribery, food and drug adulteration, tax evasion, black marketing, profiteering, hoarding, money laundering, human trafficking, cyber-crimes etc. The first of the study "Introduction and Historical Perspective" deals with introduction and historical perspective of white collar crimes. In this chapter the nature of white collar crime and its historical aspects have been discussed. The White Collar Crimes and Indian Penal Code, 1860 deals with analysis of different provisions of the Indian Penal Code, 1860 dealing with white collar crimes. The Indian Penal Code, 1860 is the earliest comprehensive and codified criminal law of India. It also deals with many white collar crimes and punishment is provided for the same. These crimes are such as bribery and corruption, counterfeiting of coins and government stamps, offences relating to weights and

measures, offences relating to adulteration of food stuffs and drugs, misappropriation of property, criminal breach of trust, cheating, forgery and offences relating to documents and counterfeiting of currency. The Analysis of Specific Laws on White Collar Crimes deals with analysis of specific Acts on white collar crimes. Besides the Indian Penal Code, 1860 there are quite a few other enactments specifically designed to deal with white collar crimes such as: the Prevention of Food Adulteration Act, 1954; the Narcotic Drugs and Psychotropic Substances Act, 1985; the Prevention of Corruption Act, 1988; the Prevention of Money Laundering Act, 2002; the Food Safety and Standards Act, 2006. In this chapter the main provisions of laws relating to white collar crimes have been discussed in detail. In this chapter the present study further reveals the various defects and lacunas of these laws. Fourth chapter of the study entitled “Judicial Attitude Towards White Collar Crimes”, deals with attitude of judiciary, towards these crimes. Numerous judgments delivered by Supreme Court and various High Courts on different facets of white collar crimes have been analyzed.

Keywords: Abuse of authority ; Behavioral and Social Sciences ; Psychology ; White collar crime ; Fraud ; Business crime costs ; Behavior patterns ; Retail business crimes.

RESEARCH QUESTION: What are the reasons for white collar crime in defense?

OBJECTIVES:

To protect high social status and considerable trust influence to commit crime

To prove privileges held by elite are often not visible

To provide examples of offences that occur in defence

To forecast white collar crime as to be a serious offences than any other offences

HYPOTHESIS:

POSITIVE: White collar crime is a serious nature and have an impact in society with influence of high society.

NEGATIVE: White collar crime not a serious offence and does not have an impact on society.

MATERIALS AND METHODS

For this study, only SECONDARY SOURCES –DOCTRINAL RESEARCH have been referred to. Secondary source include books, articles and journal publications relating to the topic in India. Various websites, blogs and online materials have been referred.

INTRODUCTION

White collar crime refers to those wrongdoings that are designed to produce fiscal dividend using some form of artifice. This type of crime is usually committed by the hotshots of the business world who are able to gain access to other people's riches. White collar crime does not involve violent, drug-related, or overtly illegal activities. They may be holding admirable positions in the community prior to their eye-opener shrewd schemes. People involved in white collar crimes usually have money or muscle power. White Collar Crime involves deception or duplicity of trust. It is committed by persons of respectability and high social status in the course of their occupation. They are a greater threat to society than street crime because the former promotes cynicism and distrust of basic social institutions. People who are involved in white collared crimes are commonly known as Meat Eaters. These criminals are being protected by professionals who are finding loopholes in the judiciary and are supported by the administration indirectly. Not much rigorous actions have been taken to curb this peril. In the late 1930s, criminologist Edwin Sutherland first coined the term "white collar crime" in his address to the American Sociological society to describe the criminal activities of the rich and powerful. White collard criminals are intrinsically termed as Meat Eaters. The meat eaters are the ones who want to attain maximal satisfaction by fulfilling their desires through wrongful means. They have a lust for power. They can go to any extent to suffice their greed. The offense is committed with cool calculation and deliberate design with an eye on personal profit regardless of the consequence to the community. White collar crime is also known as illegal, non-violet behaviour of employees of businesses. It is the crime committed by persons of relatively high social or economic status in connection with their regular occupations.

CHAPTERISATION

Causes of White-Collar Crime

The general perception is that the white collar crimes are committed because of greed or economic instability. But these crimes are also committed because of situational pressure or

the inherent characteristic of getting more than others. However, there are various reasons for white collar crimes.

Not really a crime: Some offenders convince themselves that the actions performed by them are not crimes as the acts involved does not resemble street crimes.

Not realizable: Some people justify themselves in committing crimes as they feel that the government regulations do not understand the practical problems of competing in the free enterprise system.

Lack of awareness: One of the main reason of white collar crime is the lack of awareness of people. The nature of the crime is different from the traditional crimes and people rarely understand it though they are the worst victims of crime.

Greed: Greed is another motivation of the commission of crime. Some people think that others are also violating the laws and so it is not bad if they will do the same.

Necessity: Necessity is another factor of committing crimes. People commit white collar crimes in order to satisfy their ego or support their family.

Laws relating to White Collar Crimes

The government of India has introduced various regulatory legislations, the breach of which will amount to white-collar criminality. Some of these legislations are Essential Commodities Act 1955, the Industrial (Development and Regulation) Act, 1951.,The Import and Exports (Control) Act, 1947, the Foreign Exchange (Regulation) Act, 1974, Companies Act, 1956, Prevention of Money Laundering Act, 2002.

The Indian Penal Code contains provisions to check crimes such as Bank Fraud, Insurance fraud, credit card fraud etc. In case of money laundering several steps have been taken by the government of India to tackle this problem. The Reserve Bank of India has issued directions to be strictly followed by the banks under KYC (Know Your Customer) guidelines. The banks and financial institutions are required to maintain the records of transactions for a period of ten years.

In order to tackle with computer-related crimes, Information Technology Act, 2000 has been enacted to provide legal recognition to the authentication of information exchanged in respect of commercial transactions.

Section 43 and 44 of Information Technology Act prescribes the penalty for the following offences:

- § Unauthorised copying of an extract from any data.
- § Unauthorised access and downloading files.
- § Introduction of viruses or malicious programmes.
- § Damage to computer system or computer network.
- § Denial of access to an authorised person to a computer system.
- § Providing assistance to any person to facilitate unauthorised access to a computer.

Though the focus of Information Technology Act is not on cybercrime as such, this Act has certain provisions that deal with white collar crimes. Chapter XI deals with the offence of cyber crime and chapter IX deals with penalties and adjudication of crime. Apart from this, many issues are unresolved due to lack of focus. Some of them are:

- § Inapplicability
- § Qualification for appointment as adjudicating officer not prescribed
- § Definition of hacking
- § No steps to curb internet piracy
- § Lack of international cooperation
- § Power of police to enter and search limited to public places
- § Absence of guidelines for investigation of cyber crime

There are some measures to deal with white-collar crimes. Some of them are, creating public awareness of crimes through media or press and other audio-visual aids and legal literacy programmes. Special tribunals should be constituted with power to sentence the offenders for at least 5 years and conviction should result in heavy fines rather than arrest and detention of criminals. Unless the people will strongly detest such crimes, it is not possible to control this growing menace.

INTERNATIONAL CONVENTIONS

International sensitivity to the fight against corruption – as evident from the level of overseas implementation and effect of the FCPA and international treaties such as the OECD

Convention on Combating Bribery of Foreign Public Officials in International Business Transactions ("**OECD Convention**") – has deeply affected Turkey's approach to and treatment of corruption issues.¹ White collar crimes regulated under the Turkish Penal Code ("**TPC**") – after amendments in 2005 in line with the OECD Convention – can be listed mainly as follows: bribery; fraud in tender; fraud in performance of obligations; laundering of the proceeds of an offense; abuse of trust; using a valueless bond; theft and qualified theft by deception; bankruptcy by deception and reckless bankruptcy; disseminating false information about companies or co-operatives; forgery of official documents; forgery of private documents; establishing crime organizations in order to commit offenses; failure to disclose criminal activity; alteration, concealment or destruction of evidence; disclosure of confidential documents or information relating to commerce, banking or private customers; restriction of supply of goods and services; and offenses concerning data processing systems. In Turkey, tougher penalties and more leniency options are being introduced, encouraging not only whistleblowing but also self-disclosure, leading to a race between the accomplices to crime – legal entities and their employees – to self-disclose. Leniency for some offenses listed above (such as bribery, laundering of the proceeds of an offense, bankruptcy by deception and reckless bankruptcy, etc.) is a novelty that the newly enacted TPC introduces.

HOW TO SOLVE PROBLEMS

Implementing Verification Systems

It is not a good idea to allow one employee to handle all contracts, financial transactions or fiscal management. Implementing a verification or checks and balances system helps to prevent white collar crime within your business. No one person in your organization should have too much power or access that would allow them to conduct crimes. Even if one fishy transaction were performed by an employee, a thorough verification of the transaction could catch the culprit.

Tracking Internet Activities

White collar crime often involves the internet. Be sure to use software in your business that closely monitors the websites, social media connections and activities conducted by your

employees. If your business does not already have an internet usage policy in place, create one. You may also want to require that employees using their personal devices have monitoring software installed by your information technology department.

Working With an Attorney

Consider working with a white collar crime attorney. These legal practitioners can advise you on what to do if you suspect your employees are conducting illegal activities. An attorney can inform you of your rights as a business owner, including how to go about pressing charges for white collar crime.

Monitoring Employees

Monitoring your employees helps to keep your business secure. Knowing they are being monitored could be an effective deterrent to criminal activities. Video cameras are an effective tool for monitoring areas of temptation, such as cash registers and supply cabinets. Consider a system that saves the recordings in case you need them for future evidence of white collar crimes.

Inventorying Equipment

Inventorying equipment and supplies on a regular basis reduces the risk of theft. It is also a wise plan to check purchase orders against your inventory. Consider implementing an RFID tagging system and a regular survey of the equipment and supplies owned by your business. These five methods of reducing your risk of white collar crime could help to keep the doors of your business open. Each of these methods requires an investment of time, energy and resources. Your investment will be worthwhile because it greatly reduces your company's risk of dealing with the aftermath of significant criminal activities.

TYPES

The term white collar crime covers a wide array of crimes, but they all involve crimes committed through deceit for the purpose of gaining money or other assets. The most common types of white collar crime include fraud, insider trading, and bribery. White collar crimes can often be difficult to prosecute, as the perpetrators take sophisticated steps to ensure their illegal activities are difficult to detect. The most common types of white collar crime are explained below.

Fraud

Fraud is committed by misrepresenting facts in order to gain something in return. The crime of fraud requires four elements:

- § The perpetrator made a statement of fact that he knew to be false
- § The perpetrator intentionally made the false statement
- § The victim believed the statement to be true, relied on the statement, and lost something of value, based on his belief

Insider Trading

Insider trading is often considered a type of fraud, though many people are surprised to learn that not all insider trading is illegal. Insider trading is against the law if a securities transaction, which is the sale or purchase of stocks, is engaged in by a person, or small group of people, inside the company, who have special knowledge not available to others.

Bribery

Bribery is committed when a person uses something of value to tempt or influence someone to act in a specific way, to make certain decisions, or to express certain opinions. This is most commonly seen in one person offering to pay money to another person, who is in a position of authority, for the purpose of persuading him to do something, or to refrain from doing something. Both offering bribes, and accepting bribes, are considered illegal.

Forgery

The altering, making, possession, or use of a falsified document, such as a check, contract, or other document, with the intent to defraud or injure the recipient of the document. This includes such crimes as passing forged checks, and creating, possession, or selling falsified art.

Conclusion

It is clear that due to advancement of science and technology newer form of criminality known as white-collar crime has arisen. The term “white-collar crime” has not been defined in the code. But the dimensions of white-collar crime are so wide that after analysing the provisions of Indian Penal Code 1860, we may conclude that certain offence under Indian Penal Code is closely linked with white collar crimes such as bribery, corruption and adulteration of food, forgery etc. The provisions of Indian Penal Code dealing with white-collar crimes should be amended to enhance punishment particularly fine in tune with changed socio-economic conditions. The special Acts dealing with white collar crimes and the provisions of Indian Penal Code should be harmoniously interpreted to control the problem of white-collar crimes. One of the crucial reasons for the ineffective enforcement against white collar crimes is the social status of the criminal. These offenders have the social, political and economic power to influence such charges against them. Rampant corruption also leads to such criminals moving scott-free. The social wrong underlying the white collar crimes need much more drive on the part of the regulatory and enforcement authorities as compared to the ordinary crimes. The need of the hour is to bring these traitors to their knees and show them that the law of the land is no way influenced by such criminals and they must be punished for their misdemeanor.

REFERENCES

1. <http://study.com/academy/lesson/what-is-white-collar-crime-definition-statistics-examples.html>
2. <http://criminal.findlaw.com/criminal-charges/white-collar-crime.html>
3. <http://public.getlegal.com/legal-info-center/white-collar-crime/>
4. <https://www.scribd.com/doc/11531899/Whit-Collar-Crime>
5. CRIMINOLOGY BY GIRJESH SHUKLA (LEXIS NEXIS)

6. CRIMINOLOGY AND PENOLOGY BY M.PONNIAN (PIONEER BOOKS)
7. CRIMINOLOGY AND PENOLOGY BY J.P.S. SIROHI(ALLAHABAD LAW AGENCY)
8. CRIMINOLOGY AND PENOLOGY WITH VICTIMOLOGY BY PROF.N.V.PARAJAPE (CENTRAL LAW PUBLICATION)
9. CRIMINOLOGY AND PENOLOGY BY AHMAD SIDDIQUE QADRI (EASTERN BOOK COMPANY)
10. <https://www.gktoday.in/academy/civils/question/corruption-in-defence-procurement-in-india/>
11. <https://economictimes.indiatimes.com/news/defence/corruption-high-in-indias-defence-deals-transparency-international/articleshow/49655141.cms>
12. <https://government.defenceindex.org/#close>
13. <https://www.firstpost.com/india/corruption-in-armed-forces-how-extensive-is-the-rot-388808.html>
14. <http://www.lawyersclubindia.com/articles/White-Collar-Crime-8556.asp>
15. <https://blog.ipleaders.in/analysis-white-collar-crimes-india/>
16. <https://www.news18.com/news/india/a-brief-history-of-defence-scams-in-india-590770.html>
17. <http://wtdnews.com/5-indian-defence-deals-gone-bad-2/>
18. <https://corporate.cyrilamarchandblogs.com/category/white-collar-crime/>
19. https://www.business-standard.com/article/markets/the-changing-dynamics-of-white-collar-crimes-in-india-116102200032_1.html
20. <http://www.journalcra.com/article/white-collar-crimes-legal-challenge-indian-corporate-system>
21. Dr.Lakshmi T and Rajeshkumar S “In Vitro Evaluation of Anticariogenic Activity of Acacia Catechu against Selected Microbes”, International Research Journal of Multidisciplinary Science & Technology, Volume No. 3 , Issue No. 3, P.No 20-25, March 2018.
22. Trishala A , Lakshmi T and Rajeshkumar S,“ Physicochemical profile of Acacia catechu bark extract –An In vitro study”, International Research Journal of Multidisciplinary Science & Technology, Volume No. 3 , Issue No. 4, P.No 26-30, April 2018.

