

## An overview on white collar crime

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### Abstract

White collar crime is not visible and non violent in many different respects. Offences are typically not revealed within occupational and organisational routines are therefore it is difficult to detect the victims observers or law enforcers and therefore few offenders are tried and sentenced in open court. White collar crime is absent from public and academic discussions of Crime and criminal policy. The main objective of this Article is to expose the extent impact and failure to fully criminalise the crimes of the 'powerful'. The main purpose these crime is to obtain money and property avoid losing existing property or gain a personal or commercial advantage. White collar crime even include organisational crimes. At the end of the day, it can be clearly said that white collar crime cause much bigger crimes. This Article has given stress on precautionary measures in order to detect and prevent white collar crime.

**Keywords:** Invisible, non-violent, organised crime, money laundering, corporate crime

### Introduction

White Collar Crime is mainly non-violent crime committed for financial gains and it leads to distress and loss to other person. It has to be remember that white collar crime, is also not a victimless crime. On the other hand it destroys families, companies and leave the victim suffering and weeping. The term white-collar crime is a generic term and the term includes corporate fraud, money laundering, insider trading, embezzlement etc. Generally it is seen that white collar crime is committed by sophisticated segment of society. White collar crime consists of some essential impediments

1. White collar crime is non-violent in nature.
2. It is an act or omission which is resulting in injury.
3. The intension of committing white collar crime is to defraud or deceive other.
4. White collar crime causes wrongful loss to the victim and wrongful gain to the perpetrator.
5. White collar crime causes financial enrichment of the wrongdoer.
6. White collar crimes cause financial distress to the victim.
7. White collar crime is not dependent on the application of physical force <sup>[1]</sup>.

White collar crime is mainly committed by the person who often by the virtue of their occupation exploits social, economic or technological power for personal or corporate gains. Basically the term 'white collar crime' has been coined in 1939 by the American Criminologist Edwin Sutherland. Advancement of commerce and technology have broadened the scope of white collar crime.

White collar crime include price collusion, falsifying reports of tests on pharmaceutical product to obtain manufacturing licenses, and substituting cheap, defective material for costlier components specified in the construction of roads or building but charging the customer for the full cost of the specified materials. At time such activities can be attributed to individual employees or executives acting on their own initiative, but it is often the case that they represent a

collective and organized effort by a corporation to increase its profit at any cost.

White collar crime is a part of a collective and organized effort to serve the economic interest of a corporation is known as corporate crime. In many cases, it is seen that corporate crime are conducted by bogus entities that pose a legal corporation or partnership. Although corporation cannot be incarcerated they can be criminally punished with fines and other section. In this case criminal liability is based on the act or omission of the company's employees and executive <sup>[2]</sup>.

White collar crime is mainly associated with the educated and affluent class. The word 'white collar' has been first coined by Edwin Sutherland, a sociologist. Sir Edwin Sutherland has defined the crime as that type of crime which is being committed by the respective section of person and those who hold high social status during the course of their occupation. Various management defined white collar worker as 'shirt and tie' setters. Nowadays another things that facilitate white collar crime is 'internet'.

### Historical Background

In the year 1473 in England, a case known as 'Carries's Case' where white collar crime was committed the fact of the case was that as principal entrusted an agent with the responsibility of transporting the wool from one place to another. Thereafter, the agent broke the trust of principal by stealing some of this wool. In this case the English Court punish the agent by adopting a doctrine of 'breaking the bulk' which mean that the agent whose status was that of a bailee to whom the possession of goods has been transferred tried to break it open and misappropriate the contents.

Thereafter, the growth of industrial capitalism has taken criminality into another level. Out of greed and in order to attain more the bourgeois institution are committing more crime. In order to stop these, in the year 1890 the Sherman Antitrust Act was passed in America. The said act made the monopolistic practices illegal. Even penalties was imposed on the offender of white collar crime in Great Britain along with various competition or antitrust laws was adopted.

In the year 1939, Edwin Sutherland for the first time coined the term 'white collar crime'. He has defined 'white collar crime' as that of crime which is being committed by person who hold high status in the society during the course of their occupation.

In the year 1934 Albert Morris stated that when the person who are holding high social strata when committing any illegal activity during the course of their occupation, they must be punished by putting that illegal activities under the category of crime.

Sir Edwin Sutherland drew the distinction between blue collar crime and white collar crime. Thereafter, in the year 1941, finally, the concept of 'white collar crime' got its recognition in criminology.

### White Collar Crime vs Blue Collar Crime

#### Meaning

The offenders white collar crime need to have knowledge before committing the crime, but in case is blue collar crime the offenders can commits the offence physically. The concept of blue collar is age old concept. But the concept of white collar crime is new concept rather it is a new species of crime.

#### Mens Rea

In case of white collar crime mens rea is not an essential ingredients and in case of white collar crime social condition that is poverty, personal condition of the offender is also not a factor. Whereas mens rea is an essential ingredients in blue collar crimes and social condition that is poverty, illiteracy, personal condition also plays a vital role in case of blue collar crimes.

#### Direct access to the targets

As white collar criminals are the person who are holding high position in their company so it is easier for them to have direct access to their target. But the offenders of blue collar crime have to pass through various hurdles in order to reach to their target point.

#### Mask / Veiled Offender

The offender of white collar crime does not have to come face to face with the victim so their indentity remains concealed. But in case of blue collar crimes, the offender has to come face to face with the victim, otherwise he cannot inflict injury to the victim, thus indentity of the blue collar offender gets revealed.

#### Nature of Harm

Sometimes in case of white collar crime the harm is inflicted not only an individual but to the other institution and organization as well. But, generally in case in blue collar it is seen that harm is inflicted on the individual or the individual's family <sup>[3]</sup>.

#### Reason Behind Committing White Collar Crime

There are various reason behind committing white collar crime. The reasons are stated below:

1. **Lack of Awareness:** White collar crime is a new concept and it is different from traditional type of crime. Many times it is seen that victims fails to understand its and are easily fooled at the hands of such perpetrators.

2. **Greed:** There is a saying that 'there is ample for a man's need but never enough for a man's greed'. The ever increasing wants of man is one of the sole factor behind the commission of such offenses.
3. **Convincing Power of the Perpetrators:** The offender can easily convince the victim as they do not involve violent streaks that characterize traditional crimes.
4. **Necessity:** In many cases it is found that the offender in order to overcome financial hurdles for supporting their family out of necessity commits white collar crime.
5. **Satisfying one's ego:** Sometimes the offender commit this type of crime in order to satisfy one's ego.
6. **Lack of Proper Implement of Law:** Inability to execute existing laws in a strict manner often results in rise of such acts.
7. **Advancement of Technology:** Advantage of technologies is another reason behind rapid growth of white collar crime. Internet is another contributing factor for growth of this type of crime <sup>[4]</sup>.

#### Impact of White Collar Crime

White collar crime have a large impact on the society and it does not only affect the criminals. It is also known as socio-economic crime because it has direct effect on the society, when due to white collar crime huge losses on business is committed it has a direct impact on the consumers and the society. There are various numbers of frauds and scams that had been exposed in our country like banking scam, fodder scam etc. Due to these frauds and scams the economy of our country has shambled. The impact of white collar crime on the society is great. There is loss in every field, from the costs of commodities to the securities and insurance. One financial fraud can affect the businessmen, the investors and the government. One financial fraud will cause harm to the reputation of the company, lack of profit and gain of losses.

#### Classification of White Collar Crime

White collar crime is generally divided into two categories:

1. **Individual Crimes:** Crimes which is done for personal gains or enrichment are called individual white collar crime when any particular individual commits any crimes for his wrongful gain and for wrongful loss of others.
2. **Corporate Crimes:** White collar crime is part of a collective and organized effort to serve the economic interest of a corporation is known as corporate crime. In some cases corporate crimes are conducted by bogus entities that pose a legal corporation or partnerships. Although corporations cannot be incarcerated, they can be criminally punished with fines and other sections. Criminal liability is based on the acts or omissions of the company's employees and executives.

There are several ways in which white collar crimes can be executed. Those ways are stated below:

1. **Bank Fraud:** Act committed or omitted to defraud a bank institution.

2. **Bribery:** It is an act which is committed with the intention to create undue influence over a party holding some eminent position or in order to accelerate and conceal certain act in order to defraud other.
3. **Black Marketing:** Act involving the sale of illegal things or selling legal things in an illegal way, for minting money.
4. **Corporate Fraud:** Act done by corporate entities which involve accounting schemes that are conceived to deceive the investor auditors and analysts about the true financial condition of a corporation.
5. **Insider Trading:** Act that involves trading in a public company's stock by someone who has non-public, material information about that stock for any reason.
6. **Money Laundering:** It is an act by which large amount of money is being minted and that is generated by way of criminal activity such as terrorist funding or trafficking and thereby making them appear to have come from legitimate sources.
7. **Mortgage Fraud:** Deliberate misrepresentation and deception involving lending practices that target certain borrowers.
8. **Pump and Dump Schemes:** This is another type of white collar crime whereby investors are encouraged to buy shares fraudulently in a company in order to inflate the price artificially and then selling one's own shares while the price is high.
9. **Self-dealing:** Basically this refer to the conduct of a trustee or other fiduciaries that consist of taking advantages of their position in a transaction and acting for their own benefit rather than in the interest of the beneficiaries of the trust.
10. **Wire Fraud:** A crime in which a person plots a scheme to defraud on obtain money based on false representation. This criminal act is achieved using analog or electronic communication techniques.
11. **Felony Embezzlement:** Embezzlement is generally a misdemeanor, but becomes a felony when the amount of money or property is over specified amount.
12. **Falsifying Documents:** This type of crime occurs when someone lies or omits important information an official forms or documents in order to receive some sort of gain. This can include lying on various forms including police reports, passport application and tax forms as well as forging a signature.
13. **Tax Evasion:** Tax evasion is committed with an intention to conceal one's actual taxable income and one's original position to the authorities. It means to hide the money obtained from the illegal means in order to reduce one liability to pay tax and to show low income.
14. **Health Care Fraud:** Health care fraud is basically that type of fraud which occurs,when someone in order to

gain benefits from a health insurance submits false information.

15. **Racketeering and RICO:** It is defined as running an illegal business such as drug trade prostitution ring or illegal gambling activity. RICO stand for the Federal Racketeer influenced and Corrupt Organization Act, which is a confusing law that allow government to go after large mafia style crime organization.
16. **Cheque Kiting:** It is done when someone writes a cheque for more than the funds available in his or her account and cashes it or places it in a new account. He or she fill the old fund with money before the cheque clear in order to get an interest free loan during the time before cheque clears.
17. **Computer Fraud:** A new form of white collar crime, computer fraud includes hacking, piracy, phishing and spamming schemes and illegal removal or tampering with data.

With the advancement of technologies the commission of white collar crime has increased at alarming rate.

#### Indian Legislative Regime

In India various legislation have been passed in order to combat white collar crime.

**Essential Commodities Act, 1955:** This act basically gives power to the government to issue order for controlling the sale and purchase price of essential commodities. After many cases of price gouging and hoardings, they added masks and sanitisers under the Act. The price for these goods was also fixed later. The Ministry of Consumers Affairs advised the state government to take measures to maintain the demand and supply balance of sanitisers. Contravention of the order can lead to imprisonment up to seven years or fine.

**Industrial (Development and Regulation) Act, 1951:** The main objective of this Act is to take necessary steps for the regulation and development of important industries. The act brings under commerce in certain commodities. The Control of Central Government the development and regulation of a number of industries listed in the first schedule. This act provides necessary means to the Central Government to implement its industrial policy. This Act also regulate the pattern and direction of industrial development. A system of licensing is introduced under the Act to regulate planning and future development of new undertaking on sound lines.

**Import and Export (Control) Act, 1947:** This Act impose restrictions on import and export of goods.

**Income Tax Act, 1961:** This Act was introduced with the intention of widening the net of the tax and giving them extensive power or there was no time limit prescribed under the Black Money Act.

**Commodities Act, 1955:** This another legislation to combat white collar crime. This Act is enacted for the interest of general public for control of production, supply and distribution of track and commerce in certain commodities.

**Foreign Exchange (Regulation) Act, 1973:** The FERA Act is a legislation that was enacted with the purpose to regulate certain dealing in foreign exchange, impose restrictions on certain kinds of payment and to monitor the transaction impinging the foreign exchange and the import and export of currency.

**Prevention of Corruption Act, 1988:** This act focuses to serve a consolidated provision of IPC, CrPC in order to deal with the issues relating to the increased cases of bribery and corruption within India. The main object of this act is to restrict the government servant to engage in any unlawful activity.

**Company's Act, 2013:** The provision under this act provides a list of activities that falls within the purview of fraud and specific sanction have already been assigned to the same. Moreover, the nature of all the acts that have been enlisted to be considered as non-cognizable in nature and rules for speedy trial of the same has also been stated under the Act.

**Prevention of Money Laundering Act, 2002:** The main objective of this Act is restricting any form of activities that came under the ambit of money laundering. As India is still considered as one of the greatest hub for the generation of large volumes of black money and thereby range of activities are being carried out on the perspective of turning the same into legal or genuine money.

**Indian Penal Code, 1860:** Indian Penal Code contain the arrangement to check violation like Bank Fraud, Insurance Extortion, Charge and Misrepresentation and so on. Section 463 to 474 of IPC deals with offence related to white collar crime and they include defilement and remuneration, nourishment and medication contaminated, tax avoidance, dark advertising, profiteering, storing, tax erosion, human trafficking, digital wrong doing and so on.

**Information and Technology Act, 2000:** This Act is mainly enacted to tackle the crime related to computers and technology. The main object of this act is to regulate and authenticate the information exchanged while doing commercial transaction. This Act also contain penalties where any unauthorized data is downloaded assessed, copied.

**Securities Exchange Board of India Act, 1992:** The SEBI is the regulatory agency in charge of enacting and amending regulation governing unfair activities in the financial market. This act ensures that all essential information is available to participants while also ensuring that no sensitive information is disclosed in process. Under the said act, the penalties for doing corrupt activity such as insider trading have been outlined. The Amended Act also talk about punishment.

These are the various act by which white collar crime can be combat. The main object of these Act is to tackle the crime. This act also contains the penalties so that it has a deterrent effect on the offender of white collar crime <sup>[5]</sup>.

**Role of Judiciary in Combating White Collar Crime**  
Judiciary has played a vital role in combating white collar

crime. Not only legislation but also judiciary has an important role in curbing white collar crime.

### 1. SEBI vs Burman Plantation and Others

The Learned Counsel on behalf of SEBI stated that the company is being wrongly accused as the company was not in a position to pay its debts, including payment to its investors. When the advertisement by the company was put to question, the council said that the advertisement was given in 2003, while the order was passed in 2004, when the company was not in a position to payback its debts. The sum of money which the investors were claiming was not cited. The main claim of the counsel made the legislatures raised the punishment from 1 year to 10 years and also increased the fine which may now extend to 25 crores by amending the laws under Sec 24(1) of SEBI Act.

### 2. Anokh Ekka vs Central Bureau of Investigation

Anokh Ekka was accused of money laundering after acquiring a large amount of movable and immovable properties in his name and that of his family within a three year period after becoming the minister. The defendants were found guilty of plundering and laundering a large quantity of public funds of Supreme Court. He postponed the verdict and tampered with the evidence against him. He was also accused of misusing the legal system and attempting to defraud the court system.

### 3. Arun Kumar Mishra vs Directorate of Enforcement

In this above mentioned case five persons opened a fictitious account with the Punjab National Bank and made personal gains while causing PNB to lose a significant amount of money. This offence did not come under the purview of any section of the Prevention of Corruption Act, the money laundering case was dismissed. Ex-post facto laws has no legal force. It is a basic right under the stated Article not to be tried under a legislation that did not exist at the time the offence was committed. The court stated that if money laundering has been proven against the petitioner, then the Enforcement Directorate can bring a new case against him under the statute in effect at the time <sup>[6]</sup>.

### Conclusion and Suggestions

White collar crimes are the crime which causes a harm to the economy of the country as a whole. It threatens the country's economy by bank fraud, economic thefts evasion of tax etc. It not only affects the financial status of a country or a person, but it has also a negative impact on the society. There is no proper definition of white collar crime in Indian laws. These socio-economic crimes should not be taken leniently by the government. There should be more stringent punishment in order to prevent the white collar crime. Most of the people are not aware about these crimes so there is urgent requirement of public awareness with the advancement of technology the white collar crime has extended at an alarming rate. No technology is bad unless and until we know the right key to use it.

### Suggestion to prevent white collar crime

In India where there is mass illiteracy large scale starvation and ignorance affect the life of the people, white collar crime are increasing in large proportion. There is high need to control these crime, however, some of the remedial measures for combating white-collar crime are stated as below:



1. Creating public awareness against the crimes through the media of press, platform and other audio-visual aids. Intensive legal literacy programmes may also help to reduce the incidence of white-collar crime to a considerable extent.
2. Special tribunal should be constituted with power to award sentence of imprisonment.
3. Stringent regulatory laws and drastic punishment should be enforced to combat white collar crime.
4. A chapter should be incorporated in the Indian Penal Code on 'white collar crime'.
5. Offenders of white collar crime should be dealt sternly by prescribing stiffer punishment keeping in view the gravity of injury caused to society because of these crimes.
6. The Central Vigilance Commission should monitor the working of the officials sitting at top position and also cross-check their works, so as to ensure transparency in the system.
7. The electronic and print media should be utilized in the right way to spread awareness about white collar crimes. The general people need to be aware of such crime and also they need to be aware of the remedies.
8. The government may establish a separate body which would look into the matter of crimes and criminality prevailing in the country. The independent body could be named as the National Crime Commission.

The media has a key role to play in reducing the rate of increasing white collar crimes. It has been noted that most of the white collar crimes go unreported. So in order to combat white collar crime media have to be active in this regard <sup>[7]</sup>.

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