

FORENSIC ACCOUNTING : A CHECK ON WHITE COLLAR CRIMES*By*

—Ms. VEENA, Faculty Member,
ICFAI University,
Hyderabad, A.P.

Introduction

Crime is an illegal act or omission punishable by the State under law. It may be a result of deliberate decision making or culpable negligence. It is a violation of the legal code. The essentials of crime are the malice, attempt or commitment of the crime which violates the established law and causes harm to the society. The intention of the criminal is important in fixing the punishment. Crimes may be classified as crimes against a person, crimes against property, occupational crimes, political crimes, public order crimes and conventional crimes. The occupational crimes are the crimes which are committed during the practice of profession or occupation and include economic crimes. The while collar crimes belong to the class of occupational crimes.

While Collar Crimes : Meaning, Nature and Scope

The concept of white collar crimes was coined by *Edwin Sutherland* during 1939. According to him, it is a crime committed by a person of respectability and high social status in the course of his occupation. It is generally known as the economic crime and also corporate crime. It is an off-shoot of organized crime. The white collar crime includes the illegal acts which are characterized by deceit, concealment, manipulation, illegal circumvention or breach of trust and which are not dependent upon the application or threat of physical force or violence. Academic crimes, ATM frauds, bribery, computer crimes, contract fraud, corruption, counterfeiting, embezzlement, false pretenses, forgery, fraudulent checks, impersonation, influence peddling, insider trading, investment

scams, insurance fraud, misappropriation, swindle. The embezzlement is the unlawful misappropriation of, by an offender to his/her own use or purpose, property or some other thing of value entrusted to his/her case, custody or control the embezzlement of funds in departmental stores and offices falls under this category. It is an illicit advantage of a legitimate transaction. Most of the white collar crimes are committed by young people. 'The offences I have in mind – bribery, extortion, fraud, tax evasion, perjury, obstruction of justice, false statements, insider trading and various regulatory and intellectual property crimes – tend to be committed without violence; the harms they cause are often diffuse and the victims they affect are frequently hard to identify.'¹

White collar crimes are also known as the occupational crimes as businessmen, professionals and politicians violate the law in the due course of conduct of their occupation. Based upon the nature of the crime, white collar crimes can be classified as, occupational crimes *i.e.*, the crimes committed by the professionals such as doctors and lawyers, crimes by employees against the employers such as embezzlement of funds, crimes by policy makers and crimes committed by the employees of a Corporation on behalf of the Corporation. The organizational crimes may include the window dressing,² and misrepresentation in financial statements of Corporations, manipulation in the Stock

1. *Stuart P. Green*, 'Moral Ambiguity in White Collar Criminal Law', *Notre Dame Journal of Law, Ethics and Public Policy*

2. Window dressing is the deceptive practice of using accounting tricks to make a company's balance sheet and income statement appear healthy.

Exchange, insider trading,³ commercial bribery, misrepresentation in the advertisements, embezzlement and misapplication of funds, tax frauds, misapplication of funds and intentional insolvencies *etc.* Thus some of the white collar crimes are committed by the inside people for the benefit of the organization, which protects them and makes them habituated. At a later stage they commit these crimes for their personal benefit. Some white collar crimes go unnoticed and the criminals too are left free.

The argument advocated by *Sutherland* is not acceptable always. Apart from people of high status and reputation, people with low economic and social background also commit crime with greed and for the financial benefits. The social status may have some influence in committing the crimes but does not have the impact in its entirety. In addition to the social status of an offender, economic status, mental sickness, emotions, illusions, the company in which he is working, also contribute towards the commitment of white collar crimes. It takes a long time to identify a white collar criminal than the street crime offender. They are more dangerous than the street criminals as they influence and affect not only the organizations and places where the crimes are committed but also the entire society. They endanger the business of an organization and economy of a country. They are more harmful. White collar crimes are executed with an intention to deceive or cheat and exploit for illicit advantage of a legitimate transaction, and sometimes by abusing their position or office.

The white collar offenders are more intelligent, manipulative and seemingly normal. They are not easily recognizable and cannot be identified immediately after the commitment of crime as the victim realizes the loss later. Sometimes mental abnormalities,

environmental factors much at home or office, defective discipline and movies have greater influence on the offenders. They plan the crime intelligently and do not leave any evidence. Greed and over-confidence may bring him in the net of investigations. The motivating factor for committing the crime is financial gain, greed, high standard of living and hi-tech life styles, lack of managerial controls and information systems, lack of supervision, proper screening, and code of conduct. The offender tries to utilize every opportunity that comes his way and acts as if he is clean unless the crime is identified and the culprit is traced. He leaves no doubt about the crime committed. He takes care to cover the crime and also helps in the preliminary investigations and misdirects the investigators. Some of the offenders remain silent observers of events.

White Collar Crimes and Traditional Crimes

The Courts have not paid much serious concern to the white collar crimes when compared to that of the traditional crimes. In the first case, the victims are specified persons and involvement is in commercial matters including corporate matters whereas in the traditional crimes the society in its entirety is at stake. The Courts also distinguish the white collar crimes by granting less serious punishments when compared to the serious punishments which are granted to the traditional crimes. Sometimes the white collar crimes are not taken seriously when compared to the traditional crimes. *Finkelstein J.* in a case *ASIC v. Vizard*⁴, opines that—

“The reason some people believe that white collar crimes are not serious is not only because of the absence of violence but, I suspect, because of the invisibility of the losses caused, which are usually spread among consumers and shareholders rather than concentrated on a few victims.

3. Insider trading refers to dealing in securities by persons who are privy to specific information of companies.

4. (2005) FCA 1037

The reality is, however, that the cost of white collar crime is often extremely high, causing many people to suffer greatly. Just ask the creditors and shareholders of the Pyramid Group and Estate Mortgage in Victoria, of the Board and Connell Groups in Western Australia, of the State Bank of South Australia in South Australia, of Quintex in Queensland, and of HIH and One Tel in New South Wales. The list is not exhaustive⁵.”

In white collar crimes the focus may be on organization other than on the individual offender as the corporate crime involves more than one individual. Thus concentration and focus will be on the involvement of people from same organization or others. The concept of *mens rea* requirement is not much required to be proved in case of the white collar crimes as the non-compliance or non-adherence of the rules may result in the loss to the organization. On other side it will be difficult to prove and present evidence against the white collar offender⁶. “The difference between traditional criminal law and white collar criminal law can be illustrated by what constitutes fraudulent behaviour under each. Under the traditional criminal law, fraud consists in obtaining the property of another on the basis of an intentional misrepresentation of a material fact upon which the victim relied. This requires proof that 1) the defendant obtained the property of another, 2) the defendant knowingly made a false representation of fact, 3) the fact was material and 4) the victim relied on the false representation in transferring the property⁷.”

The Courts while pronouncing the judgment and sentencing, considers various

general principles that are applied in the traditional crimes such as the character of the person doing crimes, need to create deterrent effect, criminal record, and co-operation of the offender in the process.

Correcting Measures and Processes

a. Governance and Policy

It is very difficult to limit the scope of the white collar crimes, New crimes may crop up at any particular point of time. The best way to curtail and control the white collar crimes is to prevent the crime and take all the measures to avoid the crimes. In the process, every organization has to have a define policy, procedures, inbuilt controls upon the system. There should be a conveyor belt model which takes care of the ‘checks and balances’ of the system. It is essential to review the policies of the organization and opt for foolproof policy for the fraud prevention.

Administration and governance of the organization should be transparent and people involved therein should have accountability for the deeds. The governing model should embed the risk management in its administration. Every decision taken at corporate top management level should be passed on to all levels so that each employ acts as a whistle blower.

Well defined manuals should be prepared and job cards should be distributed to the concerned desk officials and controlling authorities so that there should not be any deviance from the prefixed procedures and norms. The law and regulations should be strictly followed. For example, the company law provides for submission of various documents, papers and resolutions to the Registrar of Companies. All the documents submitted regularly so that the problems can be checked at any point of time. The documents submitted should possess accurate and timely information.

5. Ian Tunstall, “Wrongful Activities of Corporate Offices”, Tunstall Consulting, White Paper, August 2006

6. *United States v. Bank of New England*, 821 F 2d 844, 856 (1st Cir 1987)

7. John Hasnas, “Unethical Compliance and the Non Sequitur of Academic Business Ethic, Journal of Private Enterprises, Volume XXI Volume 2, Sprint 2006.

b. *Audit*

Accountants and Auditors play an important role in identifying the crime and fixing the criminals. Various statutes and accounting standards fix responsibilities upon the Auditors to audit the books of accounts and report the facts about the misrepresentations in financial statements, or about the misappropriation and embezzlement of funds, and other financial irregularities followed and practised by the organizations. Heavy liabilities are fixed on them for the lapses, either intentional or accidental. Under the present scenario of increasing white collar and organizational crimes, there is a need of specialized Accountants and Auditors who not only audit the books of accounts in traditional way, but also work differently to catch the culprits. The specialized Accountants and audit professionals required to probe into the activities to collect the information about the 'act or omission' and also the evidences to prove their crimes. The specialized Accountants are known as the 'forensic Accountants'. They undertake the forensic accounting of the organization.

c. *Controls*

The analysis of the white collar crime shows that the crime has three stages – the attempting or committing of crime, concealment of crime and assets gained under the crime and conversion of assets into liquid cash. The detection of crime in the first stage helps to recover the assets of the organization and avoid the losses to the organization. It requires the organization to adopt various tools and establish systems for self balancing and checks. The important tools that help the identification of the offenses are internal control systems, flowcharts of authorities and movement of registers and vouchers, computer audit reports, statistical data which helps to compare the organizational performance on daily, weekly and monthly basis. Any abnormal increase or decrease of statistics provides a clue for the commission of a crime. The identification

of risk exposure positions, processes, authorities also help to curb the crime on time. Regular review of the personal files, attitudes, life styles and living standards of the employees help the organization plan for a foolproof organizational structure. Once the crime is identified it is advisable to circulate its *modus operandi* of the crime to concerned and caution them. It helps the concerned to avoid further losses of similar kind. The habituated criminals follow similar operations at different places. As such some of the well known operations of criminals should be made known to all employees so that they are careful while working. News letters and information bulletins should be released on regular basis to the staff stating the code of conduct of the employees and incentive schemes for giving clues for known or suspected crimes.

d. *Investigations*

Forensic accounting is an integration of accounting, auditing and investigative skills and provides an analysis of accounts suitable to the Court as it forms the basis for awarding punishments or settling the disputes. The forensic Accountants undertake more precise duties of investigation than the traditional Accountants and Auditors. The important functions of the forensic Accountant are investigation and analysis of financial evidences, preparation of reports and exhibits, collection of documents and finally supporting the litigation activities. The primary function of a forensic Accountant is to review the situation under which the offence has been committed, provide assistance for the protection and recovery of assets and co-ordinate with the investigators, document examiners and other experts to establish the crime. He will make an initial assessment of the case, calculate damages, trace documents and prepare reports. He also helps in the preliminary investigations. He prepares an action plan for the investigation of crime and deposes expert opinion during the enquiries and also trials. He plays an important role in the process of crime detection, investigation and processing.

In order to prove himself successful in his tasks, the forensic Accountant should have curiosity, creativity, confidence, persistence and exercise professional judgment.

e. *Punishments*

The organization should design stringent punishments to deter the culprits and offenders from committing the crime again. A punishment is aimed to stop the offender from repeating the crime, deterring the offender and the public from doing the crime and also recoup the loss suffered by the organization. It should send signals to the people working in the organization about awarding serious and severe punishments to the offenders.

Conclusion

It is well accepted fact that the white

collar crimes are more dangerous to the organizations and some of the smaller ones may not be in a position to sustain the losses caused by such crimes. As such, they have to plan to curb them in the initial stages. In the process, the organizations need to take the helping hand of forensic Accountants and Auditors; organizations either appoint them or hire the services of the freelance forensic Accountants on a regular basis. With extended functions, experiences, expertise, they will be more helpful to the organizations in controlling and regulating the white collar crimes. They will be handier as they not only audit the accounts to trace the fraud and detect the criminals, but also help in various other functions such as investigation, preparation of preliminary reports, enquires and, support the lawyers during litigation.

GENDER JUSTICE – DOMESTIC VIOLENCE ACT – A CRITICAL STUDY

By

—**M. UDAYA LAKSHMI**, B.Com., L.L.M.,
Advocate, Hyderabad, A.P.

Position of Women in General

The plight of women at the present day is none too satisfactory. The Constitution of India, the Grund norm of our country, has been in existence for a half century. In pursuance of the Grund norm of our nation. Several legislative measures had been undertaken for the protection of the welfare of the women. Alas! Despite all such measures the lot of women continues to be pathetic even at the present moment. Let us take for example the Dowry Prohibition Act, 1961. Under this Act, no one can take, give or demand dowry. In spite of stringent provisions not a single day burning or suicide of the bride for harassment from her husband or in-laws or other relatives. A few recent newspaper reports are cited below to highlight the seriousness of the problem of

atrocities being committed against women in society.

Bank employee D. Satish was booked under the protection of Women from Domestic Violence Act, 2005 for allegedly assaulting his wife for more dowry and allegedly kicked his baby daughter who later died on October 26, 2005, which is first case in A.P.

Andhra Pradesh tops the list of States and Union Territories (UTS) for the most number of crimes against women for the last two years followed by Uttar Pradesh (UP) and Madhya Pradesh (MP).

Unequal status of women being offensive of human dignity and volatile of human right, has emerged today as a fundamental crisis in human development the world over. The flight against unequal law and for equal