

An Analysis upon Concept and Legal Theory of White Collar Crimes: A Review

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Abstract – This paper provides a detailed understanding behind the motives of people committing crimes. Researchers have named —the people committing crime, where the crimes were minimal and confined to a particular area of administration as Grass Eaters. People involved in white collar crimes and which has spread in almost all fields of business are termed as Meat Eaters. With the advent of technology and growth of education, white collar crimes are on the rise, being protected by professionals finding loopholes in the judiciary and support from the government indirectly.

This has created a nexus where people from almost all walks of life have started forming group to do white collar crimes and being protected by professionals in law. This has led to a situation where the small timers have become white collar criminals. Talking about the prevalence of white collar crimes in India, they are spreading like a rapid fire in every sphere of society. Though corruption, one of the species of white collar crimes, has been the most talked about issue in all spheres-social, economic and political, not much stringent steps/actions have been taken to curb this menace. Therefore the concern of this paper is to define white collar crime, study its historical development and formulate tentative solutions for eradicating the problem.

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INTRODUCTION

White Collar Crimes are the crimes committed by a person of high social status and respectability during the course of his occupation. It is a crime that is committed by salaried professional workers or persons in business and that usually involves a form of financial theft or fraud. The term “White Collar Crime” was defined by sociologist Edwin Sutherland in 1939. These crimes are non-violent crimes committed by business people through deceptive activities who are able to access large amounts of money for the purpose of financial gain.

White Collar Crimes are committed by people who are involved in otherwise, lawful businesses and covers a wide range of activities. The perpetrators hold respectable positions in the communities unless their crime is discovered. The laws relating to white-collar crimes depends upon the exact nature of the crime committed.

Use of the term “white collar crime” to refer to some category of illegal, or at least deviant, conduct is now a common feature of our linguistic landscape. Sociologists and criminologists, though disagreeing among themselves about exactly what the term means, have been talking about white collar crime for more than sixty years. The majority of American

law schools have a course in the subject. Journalists and politicians refer to it regularly.

Law enforcement agencies, prosecutors, and defense attorneys all claim expertise in the area. And the term is increasingly being used outside the United States, both in English and in translation. Yet, despite its currency in the academic, professional, and popular culture, the term “white collar crime” occurs only rarely in substantive criminal law. The term appears in only a handful of relatively obscure criminal statutes, and the question whether an offense should be considered a white collar crime is one that has arisen in even fewer cases. Or at least that was the case until recently. For it is striking that, in the recently-enacted Sarbanes-Oxley Act— one of the most important pieces of federal criminal law legislation in many years, and the subject of this symposium—the term makes a prominent appearance.

This thought evolved with the Criminologist and Sociologist Edwin H. Sutherland, in the year 1939, who popularized the term ‘white collar crimes’ by defining such a crime as one —committed by a person of respectability and high social status in the course of his occupation. Sutherland also included crimes committed by corporations and other legal entities within his definition.

Sutherland's study of white collar crime was prompted by the view that criminology had incorrectly focused on social and economic determinants of crime, such as family background and level of wealth. It is true to the common knowledge that there are certain professions which offer lucrative opportunities for criminal acts and unethical practices which is very often overlooked by the general mass of the society. There have been crooks and unethical persons in business, various other professions, who tend to become unscrupulous because of no reason apart from the thirst of gaining more and more for themselves. These deviants have least regard for ethical and moral human values. Therefore, they carry on their illegal activities with impunity without the fear of loss of respect and prestige. These crimes are of the nature of 'white collar crimes' which is the essential outcome of the development of the competent economy of the twenty-first century.

WHITE COLLAR CRIMES IN INDIA

The street crime, especially snatching and motor vehicle theft, relatively down compared to 2010, the year 2011 truly belonged to the faceless white-collar criminals. The numbers of such criminals arrested by the crime branch this year saw a massive increase — 108 per cent — as 148 people were arrested for dabbling in white-collar crime as opposed to just 71 in 2010. —In all, around 20 organised white-collar rackets were busted last year and cash and valuables, amounting to R4.5 crore, thousands of mobile phones used in the commission of criminal activity and three dozen vehicles were recovered, said a senior police officer. The list includes perpetrators of lottery fraud, fake recruitment racketeers, ATM fraudsters, travel agents, property dealers, agents promising fake court affidavits and death certificates as well as both men and women operating fake friendship clubs.

Meanwhile, the Economic Offences Wing (EoW) of the Delhi Police arrested more than 163 criminals in 1,358 cases ranging from those of land grabbing to fake job rackets and attached property valued at amounts estimated to be between Rs. 350 to Rs. 500 crore. —This year, we focused more on individual cases as opposed to those in which several persons were victimized. We got more manpower, said Vivek Gogia, joint CP (EoW). White collar crimes are to be considered as a global phenomenon to which India is no exception. As discussed earlier, white collar crimes emerged in India with the advent of the British Colonisation during the period of industrial capitalism. Prior to that, instances of men working with the District treasury embezzling with the money kept under his safe custody or bribing practiced among the officials were found. Therefore, the white collar crimes were confined to this limit. Thus, the people indulging in the white collar crimes then can be said to be mere 'grass eaters' the people in the modern times have reached the stage of 'meat-eaters'.

EMERGENCE OF WHITE COLLAR CRIMES

The earliest documented case of white-collar crime law dates back to 15th century in England. There has been a case popularly known as the Carrier's case of 1473, where the agent was entrusted to transport wool and he attempted to steal some of it for himself. Therefore the Star Chamber and Exchequer Chamber of the English Court of Law adopted the 'breaking bulk' doctrine as it constituted the crime of larceny. However, the growth of industrial capitalism in the eighteenth century ushered a new history of crime and criminality. The very base of industrial capitalism is based on coercion and robbery. Now, before we discuss the topic let us understand the meaning of capitalism

The process of emergence of these conditions was termed by Karl Marx as 'primitive accumulation' while in the words of Adam Smith, it was 'previous accumulation.'

Therefore, the Dutch Marxist, William Bonger contended that criminal attitude develops among the working class under capitalism due to conditions of misery and at the same time the criminal attitude develops among the bourgeoisie from the avarice fostered when capitalism strives. It succeeded in United States of America in 1890, when Congress passed the Sherman Antitrust Act which took the initiative to make the monopolistic trade illegal.

Other industrialized countries like Great Britain had a history of penalties involving white collar crime by that time, but it was not as sweeping as the Sherman Act. Some nations implemented a smattering of these laws, known as competition or antitrust law, but did not have a strong binding force for a long time. But more anti-white-collar crime sentiment rose in the late 19th century and early 20th century in the United States as a result of a group of journalists known as muckrakers. They laid much focus on the prevalent stock fraud, insurance fraud and underhanded practices of monopolistic companies that had grabbed under the Sherman Act. The muckrakers 'exposes gave rise to public resentment and thereby called for in some reform. By 1914, Congress attempted to solidify and strengthen the sentiment laid down by the Sherman Act, which was used against labour unions, with the Clayton Antitrust Act. This Act was much stricter and went much further than the Sherman Act in making particular monopolistic practices illegal.

WHITE COLLAR CRIME AS A CONCEPT OF LAW AND LEGAL THEORY

If one were starting from scratch, "white collar crime" is hardly the term one would choose to describe the concept we have been dealing with here. The term was vague and imprecise when first

conceived, and seems even more so today. Frequently, it means exactly the opposite of what it says, as when it is used to refer to merely deviant, non-criminalized activity. Sometimes it has been used over inclusively, such as when it refers to RICO, conspiracy, and corporate homicide. At other times it has been used under inclusively, as when it excludes various regulatory crimes and non-business-related offenses such as perjury and obstruction of justice. It has been used to refer to characteristics of persons rather than of offenses in a manner that is unacceptable within the framework of equal protection norms. Its ideological overtones are significant and, in the pursuit of objective scientific and legal analysis, unforgivable. And although it was coined only sixty years ago, the point at which all parties might agree on a definition has long since passed.

In light of all these problems, is there any justification for continuing to talk about white collar crime? It would be presumptuous of me, an academic lawyer, to offer advice to social scientists, law enforcement officials, practicing attorneys, social activists, or journalists, among others, on whether and, if so, how, the term should be used. From the perspective of legal theory, however, it seems to me that—in the absence of any viable alternative, and in light of its powerful cultural resonances—the term “white collar crime” is worth preserving, provided that certain features are understood, and various caveats observed.

A. “White Collar Crime” as a Family Resemblance Category

We would do better to think of “white collar crime” as entailing a collection of what philosophers call “family resemblances,” rather than as susceptible to definition through a precise set of necessary and sufficient conditions.⁸³ According to linguist George Lakoff, under the traditional, Aristotelian, or classical approach to classification, categories are “assumed to be abstract containers, with things either inside or outside the category. Things [are] assumed to be in the same category if and only if they ha[ve] certain properties in common.

And the properties they ha[ve] in common [are] taken as defining the category.”⁸⁴ Under the classical model, then, categories are thought to have clear boundaries and be defined by common properties. Such an approach seems appropriate in the context of defining criminal offenses.

B. Use of “White Collar Crime” in Substantive Criminal Law Legislation

If I am correct that “white collar crime” is best thought of as a family resemblance-type category, then it would seem to follow that the term would be mostly unsuitable in the realm of substantive criminal law. We expect our criminal offense categories to be

sharply defined. Citizens and decision makers need to know, as precisely as can be made out, what it is that constitutes “murder,” a “felony,” or “self-defense,” and what does not. We aspire to precision in defining mens rea and actus reus elements, defenses, jurisdictional elements, and procedural rights. The fuzzier the boundaries of such concepts, the weaker, it would seem, is the moral authority of our law.

C. Use of “White Collar Crime” in Legal Theory

In this concluding section, I want to consider the extent to which the term “white collar crime” might provide a useful label in criminal law theory. Given the substantial disagreement over its meaning, one might well wonder whether it would make sense to abandon the term entirely and rely instead on some alternative term or collection of terms, such as “economic,” “business,” “corporate,” or “occupational” crime. To put it another way, we need to ask whether there is some defining group of family resemblances that is characteristic of white collar crime and is not adequately captured by the alternatives.

TYPES OF WHITE COLLAR CRIMES

There are different types of white collar crimes. Some of them are as follows:

- Bank Fraud: Bank Fraud means to engage in such activities in order to defraud a bank or using illegal means to obtain assets held by financial institutions.
- Blackmail: Blackmail means demand for money by threatening some person to cause physical injury or exposing his secrets.
- Bribery: Bribery means offering money, goods or any gift to someone in order to have control over his actions. It is a crime whether someone offers or accepts a bribe.
- Computer Fraud: Computer frauds are such frauds which involve hacking or stealing information of some other person.
- Embezzlement: When someone entrusted with money or property uses it for his own use, it is embezzlement.
- Extortion: When a person illegally obtains someone's property by actual or threatened force.

- Insider-Trading: When someone uses the confidential information to trade in shares of publicly held corporations.
- Money-Laundering: Money Laundering means the concealment of origin of illegally obtained money.
- Tax fraud: Tax fraud means evading tax by providing wrong information in tax forms or illegally transferring property in order to avoid tax.

White Collar Crime is pervasive in almost all the professions and occupations in the society. These crimes are common to the business world and Indian trade and violation of Foreign Exchange Regulation Act and export and import laws are resorted to make huge profits.

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:

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

CONCLUSION

India to maintain its growth story needs to reduce fraud and corruption in government and private sector. As previously mentioned corruption and fraud stop multinationals from investing in the country. The decrease in foreign direct investment in 2011 and the international financial institutions outflow of funds from stock markets are clear indicators of the negative impact of fraud and corruption. 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.

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